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Supreme Court of the United States.

OCTOBER TERM, 1903.

MERRITT CHANDLER,
Appellant.
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, et. al.
Appellees.

No. 261

Appeal from the Circuit Court of the United States for the Eastern District of Michigan, Northern Division, In Chancery.

BRIEF FOR APPELLANT, IN REPLY.

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23744

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This case seems to turn upon the point whether it is an action against the State.

Appellant claims that under the authorities it cannot be considered a suit against the State: but that it is against private individuals attempting to justify their action under unconstitutional laws.

We cannot do better than quote the decisions of this Court in support of our position.

"The case, then, of the plaintiff below is reduced to this. He had paid the taxes demanded of him by a lawful tender. The defendant had no authority of law thereafter to attempt to enforce other payment by seizing his property. In doing so he ceased to be an officer of the law and became a private wrongdoer. It is the simple case in which the defendant, a natural private person, has unlawfully, with force and arms, seized, taken and detained the personal property of another."

Virginia Coupon Cases, Poindexter vs. Greenhow, 114 U. S., 270 at pp. 282-3.

"The *ratio decidendi* in this class of cases is very plain. A defendant sued as a wrongdoer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of his defence. He is bound to establish it. The State is a political corporate body, can act only through its agents, and can command only by laws. It is necessary, therefore, for such a defendant, in order to complete his defence, to produce a law of the State which constitutes his commission as its agent, and a warrant for his act. This the defendant in the present case undertook to do. He relied on the Act of January 26, 1882 requiring him to collect taxes in gold, silver, United States treasury notes, national bank currency, and nothing else, and thus forbidding his receipt of coupons in lieu of money. That, it is true, is a legislative act of the Government of Virginia, but it is not a law of the State of Virginia. The State has passed no such law, for it cannot; and what it cannot do, it certainly, in contemplation of law, has not done. The Constitution of the United States and its own contract, both irrepealable by any act on its part, are the laws of Virginia; and that law made it the duty of the defendant to receive the coupons tendered in payment of the taxes, and declared every step to enforce the tax thereafter taken, to be without warrant of law, and therefore a wrong. He stands

then, stripped of his official character, and, confessing a personal violation of the plaintiff's rights, for which he must personally answear, he is without defence."

Virginia Coupon Cases, Poindexter vs. Greenhow, 114 U. S., 270 at p. 288.

Defendants meet this proposition by citing the cases of Burrill vs. Auditor General, 46 Mich., 256 and Smith vs. Reeves, 178 U. S., 436.

Neither of these cases is the same as the case at bar either in fact or in principle. Both cases contain statements distinguishing them from the case at bar.

We call the attention of the Court particularly to the following language in Burrill vs. Auditor General cited above.

"This is *not* a case where tax proceedings are still going on and a claim is made that they are tainted with fraud *or that some officer has either acted in an unauthorized or illegal manner or is about doing so.*"

The italics are ours.

Appellant, on the contrary, claims that the proceedings in this case are tainted with fraud, that the defendants have acted in an unauthorized and illegal manner and threaten to continue doing so.

In that case (Burrill vs. Auditor General) the validity of the tax proceedings was attacked for non-compliance with a law which was treated as constitutional, at least was not alleged to be unconstitutional. The Court thus state it—"The objection which is insisted on against the title acquired by the State is that the Assessor's certificate was in each year

fatally defective." The law required the Assessor to certify to his assessments and this he had done but the certificate was evidently not in the form, or did not contain the requisites, prescribed by the Statute. That case covered only irregularity of official action not want of power or authority in the official. There was then, as the Court expressly states, no question of illegal action or unconstitutional authority involved.

The gist of the case at bar is the unconstitutionality of the law and the system under which taxes have been levied on Appellant's lands, and is based upon compliance with an unconstitutional law. He charges.

"That said laws are unconstitutional and void and confer no authority on said Auditor General and said County Treasurers or his or their predecessors, agents and purchasers from him or through them for the reasons hereinafter more specifically set forth."

Amended Bill of Complaint, Sec. 6, R. p. 87.

Under such unconstitutional laws it is the duty of the Auditor General to offer the lands for sale, of the County Treasurers to bid them in for the State if not purchased by others, and of the Auditor General to control their sale and disposition thereafter. In the case of Lee vs. United States, 106 U. S., 196, the title acquired by the United States at the tax sale where, "at this sale the land was bid in by said Commissioners (officers of the United States) for the United States" etc. was involved; and it was there held that a Court of competent jurisdiction may enquire into the lawfulness of the possession of the United States and the steps taken by its officers and agents to acquire such possession and give judgment according to the result of that enquiry.

The immunity of the State in this regard is no greater than that of the United States.

The same reasons exist for the Court's retaining jurisdiction in this case as in the case of United States vs. Lee; and to decline jurisdiction in this case would be to overrule United States vs. Lee and all cases of that class.

Similarly Smith vs. Reeves, 178 U. S., 436 is by the Court in rendering decision, distinguished from the case at bar.

The Court say:—

"Although the State, as such, is not made a party defendant, the suit is against one of its officers *as Treasurer;* the relief sought is a judgment against that officer *in his official capacity;* and that judgment would compel him to pay out of the public funds in the treasury of the State a certain sum of money. Such a judgment would have the same effect as if it were rendered directly against the State for the amount specified in the complaint."

Smith vs. Reeves, 178 U. S., 436 at p. 438.

The Italics are the Court's.

The above part of the opinion is quoted by Counsel for Appellees on page 35 of his Brief but the following important statement of the principle we are discussing, which in the opinion immediately follows the foregoing, is omitted.

"This case is unlike those in which we have held that a suit would lie by one person against another person to recover possession of specific property, although the latter claimed that he was in possession as an officer of the State and not otherwise. In such a case the settled doctrine of this Court is that the question of possession does not cease to be a judicial question—as between the parties actually before the

Court—because the defendant asserts or suggests that the right of possession is in the State of which he is an officer or agent. *Tindel vs. Wesley*, 167 U. S., 204, 221, and authorities there cited."

Smith vs. Reeves, 178 U. S., 436 at p. 438.

We do not seek to compel the State to perform any act; but within the very exception made by both the State and Federal Courts in the two cases of Burrill vs. Auditor General and Smith vs. Reeves relied upon by Appellees, we do seek to enjoin the defendants from doing some positive and affirmative injury to the Appellant in his person and property by enforcing the unconstitutional law we complain of.

No better answer to the argument of Appellees can be given than is found in the Virginia Coupon Cases commenting on the case of United States vs. Lee, than which, the Court there say no better example of this principle can be found:—

"It was decided by this Court that to sustain the defence and to defeat the plaintiff's cause of action, it was necessary to show that the defendants were in possession under the United States, and on their behalf, by virtue of some valid authority. As this could not be shown, the contrary clearly appearing, possession of lands actually in use as a national cemetery was adjudged to the plaintiffs."

Poindexter vs. Greenhow, 114 U. S., 270 at p. 289.

"It is still urged upon us, however, in argument, that notwithstanding all that has been or can be said, it still remains that the controversy disclosed by the record is between an individual and the State; that the State alone has any real interest in its determination; that the practical effect of such

determination is to control the action of the State in the regular and orderly administration of its public affairs; and that therefore, the suit is and must be regarded as a suit against the State, within the prohibition of the Eleventh Amendment to the Constitution."

* * * * * * * * * *

"The thing prohibited by the Eleventh Amendment is the exercise of jurisdiction in a "suit in law or equity commenced or prosecuted against one of the United States by citizens of another State." Nothing else is touched; and suits between individuals, unless the State is the party, in a substantial sense, are left untouched, no matter how much their determination may incidentally and consequentially affect the interests of the State, or the operations of its government. The fancied inconvenience of an interference with the collection of its taxes by the government of Virginia, by suits against its tax collectors, vanishes at once upon the suggestion that such interference is not possible, except when the government seeks to enforce the collection of its taxes contrary to the law and contract of the State, and in violation of the Constitution of the United States."

Idem pp. 296-7.

This Court has frequently enforced this principle. The principle case are

Dow vs. Chicago, 78 U. S., 108.

Ogden City vs. Armstrong, 168 U. S., 224.

In Fargo vs. Hart, Auditor of the State of Indiana, decided at the present term (Mar. 21. 1904) the Court say:—

"The assessment being bad, for the reasons which we have stated, the board of tax commissioners acted without juris-

diction, according to the decision of the Supreme Court of Indiana. *Hart vs. Smith,* 159 Ind., 182, 58 L. R. A. 949, 64 N. E., 661. We do not abate at all from the strictness of the rule that in general an injunction will not be granted against the collection of taxes. *State Railroad Tax Cases,* 92 U. S., 575, 23 L. ed., 663. But it was recognized in the passage just quoted from *People's Nat. Bank vs Marye,* that under the present circumstances a resort to equity may be proper. The course adopted is the same that was taken without criticism from the Court in *Adams Exp. Co. vs. Ohio State Auditor,* 165 U. S., 194, 41 L. ed., 683, 17 Sup. Ct. Rep., 305. It avoids the necessity of suits against the officers of each of the counties of the State, and we are of the opinion that the bill may be maintained. *Union P. R. Co. vs. Cheyenne,* 113 U. S., 516, 28 L. ed., 1098, 5 Sup. Ct. Rep., 601; *Pittsburg, C. C. & St L. R. R. Co. vs. Board of Public Works,* 172 U. S., 32, 43 L. ed., 354, 19 Sup. Ct. Rep. 90."

The office of Auditor of the State of Indiana corresponds to that of Auditor General of the State of Michigan. The actions are similar: but the former, although cited as Auditor of the State of Indiana, was not held or considered as standing in the place of the State.

The case is similar to Adams Express Co. vs. Ohio State Auditor, 165 U. S., 194 and all the other cases disposed of in that opinion, and many other similar cases in the reports of this Court too numerous to cite, in which relief by injunction was sought against a state officer, yet in none of those cases was it held that it was an action against the State.

The Supreme Court of the State of Michigan has recognized the distinction between the case at bar and that of Burrill vs. Auditor General *supra,* in the case of The Lake Superior Ship Canal Railway & Iron Co. vs. Henry H. Aplin Auditor General et al, 79 Mich., 351, which was a suit to quiet Complainant's title by the removal of the cloud from its title caused by illegal assessments.

The Court stated the proposition before it thus:

"The only other question is, can complainant maintain this suit to remove the cloud from its title caused by the illegal assessment and levy of such school taxes?"

The defendants had demurred on the ground that the Tax Law itself afforded complainant relief and that he was limited to the relief there specified. The Court overruled the demurrer and answered the above question in the affirmative. The suit was brought, as this is, against the Auditor General and County Treasurer; and the Court say

"We think that the Auditor General and County Treasurer are proper parties to the suit. The former initiates the proceedings for the sale of the lands and the Treasurer makes the sale."

Lake Superior Canal and Ry. Co. vs. Auditor General, 79 Mich., 351 at p. 354.

We also draw the Court's attention to the fact that the case of Burrill vs. Auditor General is reported in the 46th Michigan and was decided in 1881 and that the case of Lake Superior Canal & Rv. Co. vs. Auditor General is reported in the 79th Michigan and was decided in 1890.

The case of Burrill vs. Auditor General is authority for the proposition only that where mere irregularities occur in the administration of the tax law, which is not attacked as unconstitutional, the complainant cannot maintain an independent action to quiet title but is limited to the relief afforded by the law itself. The case of Lake Superior Canal Co. vs. Auditor General is authority for the proposition that where the law or the tax is unconstitutional or illegal the

complainant may maintain a suit, independently of the provisions of the Statute, to quiet his title against the person holding office the same as against any other individual.

The distinction between the two cases is perhaps best illustrated by the opinion of this Court in the case of Ogden City vs. Armstrong, 168 U. S., 224, to which we refer the Court.

The suit cannot be held to be one against the State, if we are correct in our conclusion that the Statute is unconstitutional: and for the purpose of this hearing, the defendants having demurred, it must be considered unconstitutional.

The only ground upon which it could be charged that the suit is one against the State would be that the defendants were acting under and according to the provisions of a valid law of the State; but they are acting under an act which is unconstitutional, which therefore, is not and cannot be a law of the State, and therefore they are stripped of all official character and become to the law and in the eyes of the Court merely private individuals.

Reagan vs. Farmers L. & T. Co., 154 U. S., 362.
Symth vs. Ames, 169 U. S., 466.
L. & N. R. I. & P. Ry, 110 Fed. Rep. 3 at pp. 7 and 8.
Tindall vs. Wesley, 13 C. C. A., 165.

Counsel for Appellees also claim that the action has abated by reason that one Auditor General succeeded another. *The action is planted against the defendants as individuals.* For purposes of description and identification, their official designations are added; but that is mere surplusage. It follows then that the action does not abate.

The case of Warner Valley Stock Co. vs. Smith, cited and relied upon by Appellees, is not a case in point. That was a mandamus proceeding against Smith in his official capacity.

The fact that this case is against individuals claiming authority of an unconstitutional enactment distinguishes the two cases. As this case is against Dix et. al. personally, it is immaterial whether they hold or continue in any official position.

The position, *at worst*, in which Appellant finds himself is this:—that by reason of a fact arising subsequently to the filing of the original bill, viz. that one Auditor General has succeeded another, he may be required or deem it advisable to file a supplemental bill, in order to apprise the Court of the fact that, in order to saddle him with the illegal exactions we have pointed out, a succeeding Auditor General is attemping to enforce this unconstitutional law, has become a tresspasser and liable as such, and Appellant entitled to have his action restrained.

The practice of the United States Courts would seem under Rule 57 of the General Equity Rules to require such a fact, if we wish to take advantage of it, to be set up by such Supplemental pleading.

This Court would in such a case probably follow the same course as the Supreme Court of Michigan in Fisher vs. Holden.

"The difficulty of the complainant's case, however is that this tender of payment and acceptance of the money took place after the bill was filed. It is no part of the case made by the bill, though shown by the proofs. It is also claimed by the defendant's counsel on the argument here that these facts might have been rebutted if they had been made issues by the pleadings. There is some force in this position. If these were matters which might be disposed of by an amendment of the bill, we should feel disposed to treat the bill as amended, and decree the lien of the mortgage discharged by the acceptance of the tender, and also that the deed given on the sale be set aside. But these subsequent transactions, by which

the mortgage lien became discharged, could only have been met by a new bill, or a bill supplemental to the present. To dismiss the bill now, after the time of redemption has expired, would be most inequitable. We shall therefore reverse the decree of the Court below, and remand the case. The complainant may have leave to file a supplemental bill in the Court below setting out these subsequent transactions, the proofs already taken to stand as proofs in the case, with leave to the parties to put in such other proofs relating to the issue thus made as they may deem best."

Fisher vs. Holden, 84 Mich., 494 at pp. 496 and 497.

But the Court may not regard such a course necessary.

The defendants are before the Court in their private and individual capacities. The case can be disposed of as it is now before the Court. The defendants can by no acts of theirs change the Constitution and Statutory provisions of which we complain. They cannot say they do not or will not follow them for they are conclusively presumed to act in accordance with these provisions that we have cited and quoted and of which we complain, until their unconstitutionality has been declared by a Court of competent jurisdiction.

But the parties are before the Court. Powers, Auditor General is represented by the Counsel appearing in this case as much as Dix, Auditor General is. On page 122 of the Record appears a pleading entitled:

"The demurrer of Perry F. Powers, Auditor General of the State of Michigan successor in office of Roscoe D. Dix one of the above named defendants, to the Amended Bill of Complaint of the above named complainant."

This is signed "Perry F. Powers, Auditor General."

If we are correct in our position, the fact that Perry F. Powers calls himself "Auditor General" or claims to act under authority of a statute which is in fact unconstitutional, does not affect the case. The fact remains that if the statute is unconstitutional, Powers cannot clothe himself with official authority or standing by calling himself "Auditor General" or justify under authority of the Statute. It reminds one of Lincoln's epigram that calling a sheep's tail a leg does not make it one. Dix and Powers are then both before the Court in their personal and individual, not official characters.

The words "and successors in office" may be construed to mean the same as a clause charging conspiracy of defendants with persons unknown: or may be treated as surplusage.

Even if Powers, Auditor General, and successor of Dix, Auditor General, were not before the Court (not forgetting that they are as persons and individuals for the official designation is used for the purposes of description and identification) still the Court in disposing of this case would expect all State officers to accept its decision as final and act upon it.

"We have, indeed, a right to presume that such officers, though not named in this suit will, when advised that certain provisions of the act in question have been pronounced unconstitutional by the Court to which the Constitution of the United States refers such questions, voluntarily refrain from enforcing such provisions; but we do not think it comports with well settled principles of equity procedure to include them in an injunction in a suit in which they were not heard or represented, or to subject them to penalties for contempt in disregarding such an injunction. Fellows vs. Fellows, 4 Johns. Ch., 25, citing Iveson vs. Harris, 7 Ves. Jr., 257."

Scott vs. Donald, 165 U. S., 107 at p. 117.

It has been claimed by Counsel for Defendants that while the Court may have jurisdiction as to the lands sold for taxes but not yet declared "Homestead Lands," it has no jurisdiction over the "Homestead Lands." The title to the "Homestead Lands" can be no stronger or other than the Tax Titles on which it is founded. If the law is void, and the various proceedings taken thereunder and other acts performed by the defendants are void, then the case is on all fours with United States vs. Lee (106 U. S., 196) and any title asserted to be in the State by the defendants is no legal reason for judgment not being entered against them for such acts and tresspasses as they have committed under a law which is unconstitutional and void.

Counsel for defendants assume in their argument the constitutionality of the Tax Law. Hence they insist that the Appellant is predjudiced by not having availed himself of the provisions of that law. If, as we assert, the law is void, then we could not be required to resort to its procedure or other provisions.

If we are sustained in our position that the suit is not one against the State and has not abated, and under the authorities our position seems well taken, then we submit judgment must pass against the defendants for by demurring they have admitted facts that establish the unconstitutionality of the statute in question.

The chief particulars in which the law is obnoxious to the Federal Constitution are:

1. By including in the general estimates, and collecting as part of the taxes of a subsequent year by a general levy, the deficiency of the previous year, the property of one is taken to pay the debt of another. (R. p. 90).

As was explained to the Court on the oral argument, it takes about three and one-half years to bring to sale the land delinquent for taxes. By assessing each year the deficiency of the previous year, the delinquent tax is in reality paid more than two years before the sale is held. Nevetheless the Auditor General forces the lands to a sale.

If we have established the unconstitutionality of the law, our relief does not, or should not, depend upon suggesting a remedy. We have stated that to raise in each year a contingent fund equal to the average annual deficit based upon actual experience would remove this objection to the law. Some question has been raised whether this would not in effect be the same thing. It might effect the same result so far as the amount collected is concerned; but it would not be the same in principle.

The difference in principle consists in the difference between paying a tax which is a proportionate part of a given aggregate of which the tax-payer has paid no part, and paying a tax which includes an assessment for part of a previous tax of which the tax-payer has already once paid his full quota.

In the one case the system produces, inevitable inequality: in the other it as inevitably works for and aims at equality. The latter does substantial justice; the former as surely works injustice.

The Court will take judicial notice of the fact that property is constantly changing hands. Where the entire assessment is levied in one year, instead of levying the following year a tax to cover the deficit of the previous year, persons and property are affected similarly. By levying the deficit the subsequent year, those who sell and those who buy may both

be wronged. By such a system the burden is transferred from those on whom it should rest to those to whom it in no sense belongs.

It may be that there is no other way but for the State and its municipalities to look to the property for the tax assessed against it: and wait for its and their money until it is realized and collected from the sale of the lands, without spreading generally the unpaid taxes of individuals. *It is for the Legislature to find and apply the remedy.*

The charge we make against the system is admitted by defendants on page 78 of their brief in the following language.

"Under the Constitution an annual tax is levied for the purposes therein specified. Many people delay in paying taxes, and when the next annual estimate occurs there is a deficiency. *The State requires the ready money and so the annual estimate will include the deficiency.*"

There cannot, we submit, be any justification for a system which thus confessedly takes the property of one to discharge the obligation of another.

2. There is no classification of property for purposes of taxation. (R. pp. 92 & 104.)

As the uses, nature and conditions of property differ, any just system of taxation will take into account its various relations and classify it accordingly for the purposes of taxation.

Any system which does not provide such classification is inherently unequal and unjust.

"No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

* * * * * * * * *

"It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

Gulf, C. & S. F. Railway vs. Ellis, 165 U. S. 150, at pp. 160 and 165-6.

3. Section 19 of the General Tax Law has since the filling of the bill herein been declared unconstitutional by the State Supreme Court, but for reasons other than we urge. (R. p. 96.)

This case comes to this Court on Appeal from the Circuit Court of the United States, in which it was commenced; and involves only questions that arise under the Constitution of the United States. This Court will treat the case as one of first impression, and, in deciding whether the Federal Constitution has been violated will determine for itself the questions involved.

Exparte Tyler, 149, U. S., 164 at p. 187.

We have in our original Brief pointed out that the intention of the Statute cannot be carried into effect without Section 19; and, with that Section stricken out, the whole Statute must fail.

The reason why Section 19 cannot be dispensed with in construing the law is that it lays down the rules for the guidance of the officers in assessing all property both real and personal. It states the form in which the data shall be collected and how it

shall be assembled to determine individual assessments; and there is no other Section of the law that can be substituted or take its place.

The questions we raise and the points that we make were not raised or considered in the case of Citizens St. R. Co. vs. Common Council, 125 Mich., 694 where Section 19 was held unconstitutional.

Even if for example in Section 8 (C. L., '97 Mich, Sec. 3831) it is provided that "For the purpose of taxation personal property shall include" etc., and in Section 2 (C. L. '97 Mich., Sec. 3825) it is provided that "For purposes of taxation real property shall include all lands within the State" etc., and although in Section 1 (C. L., '97 Mich., Sec. 3824) it is provided "That all property, real and personal, within the jurisdiction of this State not expressly exempted, shall be subject to taxation," yet, in order to construe the meaning of these terms as used in the act and to determine individual assessments, it is indispensable that Section 19 (C. L., '97 Mich., Sec.3842) be read with and modify the other Sections. When the assessor has arranged his data under the different heads directed by Section 19, he must in pursuance of the requirements of that Section go farther and, by making certain additions and deductions, determine the aggregate of the individual assessment.

In assessing the property of Bankers and Brokers Section 19 provides:

"The aggregate amounts of the seventh and eight items shall be deducted from the aggregate amounts of the first, second, third and fourth items, and the remainder, if any, shall be assessed as moneys. The amount of the fifth item shall be assessed as stocks and bonds, and the sixth item shall be assessed the same as other similar property, and the assessor

shall make a separate entry of each of these amounts (separate from the assessment of real estate) and the whole shall make up the aggregate personal assessment of such person, party or corporation."

In assessing Pawnbrokers Section 19 provides:

"And the amount of the true cash value of all such property, less the amount of consideration or value paid, shall be assessed as the property of such person or corporation."

In assessing the property of Companies or Associations incorporated or unincorporated—that is of corporations and partnerships, Section 19 provides:

"The amount of the seventh item (real estate) shall be deducted from the amount of the fourth item (value of capital stock), and the balance, if any, assessed as the cash value of the personal estate. The amount of the sixth item(indebtedness) shall be deducted from the amount of the fifth item (personal property) and the balance, if any, assessed as personal."

In assessing vessels and marine property, whether of a corporation or individual, including both real and personal, Section 19 provides:

"The actual value of all such property after deducting the amount of the seventh item (bona fide indebtedness) shall be deemed the *assessable* value of such property."

If an individual is assessed without reference to the foregoing limitations, Section 19 provides:

"All *bona fide* indebtedness, owing by such person, giving an itemized statement in detail, how secured and to whom owing, and the residence of such creditors and the amount due each, provided he desires to have the same deducted from his credits."——Not personal property.

Now all of the foregoing processes are simply the method of determining, in the language of the Section itself, "the assessable value of such proprty." Section 19 then is the very foundation or pivot of the entire act. Before the officer could proceed under any other Section of the law to assess property he must determine within the limits of Section 19 the assessable value of that property. True by Sections 20, 21 and 22 (Secs. 3843-4-5 C. L., '97 Mich.) the assessing officer, in case of wilful neglect or incorrect return of property on the part of the taxpayer, may take other methods of ascertaining the data required by Section 19; but he must use it in the same way as if originally furnished in compliance with that Section, and must then make the calculations specified by that Section to determine the "assessable value of such property."

The principle contemplated by the Statute, as originally enacted, was taxation of *net* as opposed to *gross* values, determined by allowing deductions for indebtedness. The two principles are mutually exclusive. By striking out Section 19, the system is transferred into one taxing gross values.

The particular method adopted is unconstitutional because denying equal protection of the law to, and depriving, Appellant of his property without due process of law; but that does not permit the law to stand without Section 19, for to do so would be to hold that the Legislature intended to do the very thing which they have declared they did not intend to. This Court said in Olcott vs. Fond du Lac (16 Wall., 678 at p. 690) that "the nature of taxation, what uses are public and what are private, and the extent of unrestricted Legislative power are matters which, like questions of commercial law, no State Court can conclusively determine for us." This language has direct application to the question presented, and follow-

ing the reasoning of Olcott vs Fond du Lac it can be said here that whether a system of taxation is based upon the assessment of *net* or *gross* values "is not a question of consti tutional construction. It is a question of general law. It has as much reference to the Constitution" system or Statute "of any other State as it has to the State of" Michigan. "Its solution must be sought not in the decisions of a single State tribunal, but in the general principles common to all Courts."

Even if the whole law has not been rendered unconstitutional by the striking out of that Section (19), still all tax titles, all sales of land for taxes, and all taxes levied and all assessments made under the law previous to the time when that Section was declared unconstitutional must be void. The decision declaring Section 19 unconstitutional was rendered February 12, 1901. and a re-hearing denied July 2, 1901. The bill herein was filed September 19, 1900. Every assessment down to the decision rendered February 12, 1901 was based upon and followed the unconstitutional and illegal methods required by that Section. Section 19 was always void. It is in conflict with the Federal Constitution particularly the XIVth Amendment thereof.

Even if the State Courts had not declared Section 19 unconstitutional, we have no hesitation in saying this Court would do so for the reason that that Section permits the indebtedness of some individuals to be deducted from the total amount of their personal property of others from credits only, and of still others from the total amount of their real and personal property. It embodies class legislation in the most aggravated form, for there are no distinctions in the persons or property affected to justify this distinction. This Court then having jurisdiction, will go further and determine the effect of the unconstitutionality of Section 19 upon the whole act.

" * * * Yet as the case is before us in a case in which the law of a State is claimed to be in contravention of the Constitution of the United States, under another clause of that Statute (Act of March 3, 1891.) we have jurisdiction of the entire case and of all questions involved in it."

Scott vs. Donald, 165 U. S., 58 at pp. 73 and 74.
Citing Horner vs. U. S., 143 U. S., 570.
Carey vs. H. & T. C. R. Co., 150 U. S., 181.
Chappell vs. U. S., 160 U. S., 499.

The acts performed under Section 19 and indeed the entire law previous to February 12, 1901, when Section 19 was stricken out by the State Supreme Court are not remedied by striking out that Section or amending the law.

"So far as these actions at law are concerned it is of course obvious that the damages recovered were for acts committed under the alleged authority of the Act of 1895, and cannot be affected by the provisions of the Act of 1896 even if the invalidities of the former Act were thereby remedied—a matter on which we express no opinion."

Scott vs. Donald, 165 U. S., 101.

In Fargo vs. Hart, Auditor General of the State of Indiana (decided March 21, 1904) already referred to, this Court held, following the decision of the Supreme Court of the State of Indiana in Hart vs. Smith, 159 Ind., 182, 58 L. R. A., 949, 64 N. E. Rep.,661, that the method of assessment was illegal and consequently that the State Board of Tax Commissioners acted without jurisdiction, although the Statute itself, under

which the assessment was made, had previously by this Court been held to be constitutional in American Ex. Co. vs. Indiana, 165 U. S., 255, and its principle approved in Adams Ex. Co. vs. Ohio State Auditor, 165 U. S., 194 and 166 U. S., 185 and Adams Ex. Co. vs. Kentucky 166 U. S., 171.

We present a stronger case. Neither the Statute nor system of taxation we attack has been upheld by this Court as was the Indiana Statute and system. On the other hand, we have referred this Court to a decision of the Supreme Court of the State of Michigan (125 Mich., 694) which, like the Indiana case of Hart vs. Smith supra, holds that the method of assessment based upon Section 19 is unconstitutional and consequently that the Assessor was without jurisdiction to make the assessment under that Section. We have gone further and shown that the rules for making deductions for indebtedness provided in said Section 19 cannot be applied uniformly but discriminate against Appellant and deprive him of his rights and property in contravention of the Federal Constitution.

It seems to us self-evident that assessments made, taxes levied and sales held under an unconstitutional Statute, or under a Statute part of which is unconstitutional and the unconstitutional provision acted upon and followed. are absolutely void in that they deprive the citizen of his property without due process of law.

Section 72 of the Tax Law of 1903, being Section 3895 of Miller's Laws of the State of Michigan, 1897, has been held void by the Supreme Court of the State of Michigan in two cases, Deveaux vs. Taylor, 100 Mich., 581, and Dawson vs. Peter, 119, Mich., 278-9. In the case of Ball vs. Ridge Copper Co., 118 Mich., page 7, the Supreme Court of the

State of Michigan held however that the whole law was not void by reason of Section 72 attempting to make tax deeds conclusive evidence of title. In Marx vs. Thorne, 148 U. S., 172 this Court has held laws making deeds conclusive evidence void.

Sections 3,895, 3,905, 3,907, 3,922, 3,928, 3,947, 3,949 and 3,953, Miller's Statutes. 1897, being sections of the tax law in controversy, all in some more or less direct way, provide that tax deeds issued shall be *conclusive evidence* of title; so that these Sections must fall. With Sections 19 and 72 and dependent sections above mentioned void, covering both the initiative of the tax law as to the method of taxation and the granting of deeds upon tax sales to carry out the law, it would seem that the whole act should be held unconstitutional.

4. The valuation of Appellant's real estate was excessive, and was not only far in excess of its actual value but was assessed higher than similar property of equal value. (R. p. 89.)

"It has, however, been held that where the valuation is so grossly out of the way as to show that the Assessor could not have been honest in his valuation, and must have known of its excessive character, such valuation will be accepted as proof of a fraud upon his part against the taxpayer, and in such case a Court of Equity will grant relief."

Burton Stock Car Company vs. Traeger, 58 N. E. Rep. 419 and Cases cited.

Enormous amounts of personal property were intentionally and fraudulently omitted from the assessment rolls. (R. p. 92.)

Either of these facts imposes a disproportionate share of the tax upon Appellant. Operating simultaneously they increase his burden out of all proportion to that of others favored by the operation of the law and the action of the officials; and bring this case within the principle of Norwood vs. Baker that where in an individual case a law is so administered as to infringe upon constitutional rights, its enforcement will in that particular case be restrained even though in general terms it may be constitutional.

Norwood vs. Baker, 172 U. S., 269 at p. 298.

"In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford of unequal and unjust discrimination in their administration; for the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations, between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this Court in Henderson vs. Mayor of City of New York, 92 U. S., 259, 23 L. Ed., 543; Chy Lung vs. Freeman, 92 U. S., 275, 23 L. Ed., 550; Ex parte Virginia, 100 U. S., 339, 25 L. Ed., 676; Neal vs.

Delaware, 103 U. S., 370, 26 L. Ed., 567; and Soon Hing vs. Crowley, 113 U. S., 703, 5 Sup. Ct., 730, 28 L. Ed., 1,145."

Yick Wo vs. Hopkins, 118, U. S. 356, at p. 373.

5. The Defendant on lands placed on the Homestead List, called Homestead Tax Lands in the General Tax Law, cancelled all taxes. (R. p. 97.)

This is only another way of charging back to Appellant the losses thus arising by act of defendant. There is no legal authority for such additional exaction.

"Losses arising from the sale of the "five year list" of State tax lands so called, under the tax law of 1869 are improper charges against the counties and their collection cannot be enforced. Auditor General vs. Ottawa County, 76 Mich., 295."

Auditor General vs. Midland County, 84 Mich., 121.

If improper charges against the County, then *a fortiori* improper charges against the individual, in this case the Appellant.

We have shown how demands for payment of taxes and other mandatory provisions of the law have been entirely disregarded, thus rendering the administration of the law unconstitutional even if the law itself were otherwise unobjectionable.

We specify without further discussion, amongst others, additional objections to the law already discussed, namely:

That the law pledges the public credit for private purposes by guaranteeing to purchasers of tax titles, in case their tax titles are void, a higher rate of interest than is allowed by the State laws. (R. p. 105, Sec. 45.)

Taxation for such a purpose is not taxation for a public purpose or use. It benefits a few at the expense of the many.

That the Legislature has usurped judicial functions by construing and defining the term "Cash value" as used in the State Constitution. (R. p. 88, Secs. 11 and 12.)

This provision of the General Tax Law would deprive this Court of the right to say what the term "Cash value" means. That term, like classification, is certainly one for judicial determination; and the Legislature of the State of Michigan has not the power to pass any law which will curtail or control the jurisdiction or judicial action of the Supreme Court of the United States.

As every assessment is and has been based upon this Legislative construction of the term "Cash value" is Appellant not interested?

Another unconstitutional interference with the judicial department is the provision of the Statute directing a decree to be entered by the Court.

Still another is conferring upon the Auditor General, a merely executive and administrative officer, the power to cancel sales and deeds.

The division of the Powers of Government is thus provided for in the Constitution of the State of Michigan, Article III:

"Section 1. The Powers of Government are divided into three departments: The Legislature. Executive and Judicial."

"Section 2. No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this Constitution."

That the system of bidding reduces the value of the land assessed to the amount of the tax levied against it when offered for sale. (R. p. 97, Subdiv. 5.)

Under such a system there is no practical way to get for the owner the surplus value. It discourages bidding, and amounts in practice to confiscation. It benefits only the tax-title shark.

Equalization of property for assessment is by the Counties made and based upon real estate only, but by the State upon both real and personal property. This produces an unequal and discriminating apportionment. The State taxes are apportioned amongst the Counties according to the ratio the total real and personal property in each County bears to the total amount of real and personal property in the State; but the State tax thus apportioned to each County is by the Board of Supervisors for that County apportioned to each Township or other municipality in the County by adding to or taking from the total assessed value of real estate only, in such Townships, or other municipality such as an incorporated City Town of Village, such arbitrary amount as the Board may

determine and assigning to each Township or other municipality, *when thus equalized*, that proportion of the State Tax which corresponds to the ratio the *equalized* value of that Township or other municipality bears to the total value of real estate in the County, disregarding absolutely all the personal property therein subject to taxation.

The provision of the Statute is:

"The Board of Supervisors in each County shall, at their session in October in each year, examine the assessment rolls of the several Townships, Wards or Cities, and ascertain whether the relative valuation of the real property in the respective Townships, Wards or Cities, has been equally and uniformly estimated. If on such valuation they shall deem such valuation to be relatively unequal they shall equalize the same by adding to or deducting from the valuation of the taxable property in any Township, Ward or City or Townships, Wards or Cities such an amount as in their judgment will produce relatively an equal and uniform valuation of the real property in the County, and the amount added to or deducted from the valuation in any Township, Ward, or City shall be entered upon the records."

General Tax Law, Sec. 34.

If real estate has been in the first instance assessed at its true cash value, this equalization (?) must seriously disturb values in levying State and County taxes.

It is to be noted too that this "see saw" method of equalization by disregarding personal property, which is largely located in the cities, shifts a relatively greater portion of the taxation from the cities to the rural communities. This is class legislation pure and simple. Yet Counsel say this is a moot question and one that does not interest Complainant, whose lands are entirely in rural districts.

An analysis of the Brief filed on behalf of the Appellees shows that the first 44 pages, after a brief statement of the case, discuss whether this is a suit against the State and argue that the State has not consented to be thus sued.

As we have pointed out this argument begs the question by assuming the constitutionality of the law. This part of the argument as well as that claiming the suit has abated by reason of one Auditor General succeeding another, which makes the same assumption, has already been fully answered herein.

From pages 44 to 65 Counsel discusses questions presented by the Bill which he classifies under the headings "Want of Equity." The Bill sets forth the entire system and scheme of taxation in Michigan. It does not do to dismiss the questions presented by simply branding them as "Moot Questions" or "Wanting in Equity." The important questions of "Classification" and "Section 19" thus dismissed by Counsel we have discussed fully. As elsewhere in his argument he still begs the question by assuming that the law is constitutional. The law he says (Brief pp. 56-57) takes away the remedy by injunction and the Supreme Court of Michigan say in the case of Eddy vs. Township of Lee, 73 Mich., 123, that the Legislature had the authority to do so. But the Federal Courts are not affected by such a provision and decision. This Court has held time and again that if the Statute under which a tax is levied is unconstitutional or if the tax or levy is illegal and the case is brought within some well recognized head of equity jurisdiction then the Complainant is entitled to relief by injunction in spite of any prohibition contained in the law.

"The law of Tennessee however, affects only the jurisdiction of its own Courts of Equity. It does not restrict or dimin-

ish the power or jurisdiction of Federal Courts of Equity, because only an Act of Congress can do that. *In re* Tyler, 149 U. S., 164; Mississippi Mills vs. Cohn, 150 U. S. 202; Kirby vs. Lake Shore etc. R. Co., 120 U. S., 130; Sheffield Furnace Co. vs. Withrow, 149 U. S., 574. Hence it follows that if the controversy * * * * is one over which the Circuit Court of the United States, sitting in equity, * * * has jurisdiction by virtue of the Constitution and laws of the United States, and according to the general principles governing equity jurisdiction, its power to issue an injunction against state officers is not restricted by a State Statute which only applies and can only apply, to injunctions issued out of State Courts."

Taylor vs. Louisville, Etc., R. Co., (C. C. A.) 88 Fed Rep., 357.

Take for example the "Method of Sale." Counsel says Appellant shows no interest because the lands have been bid off for the State. Appellant's contention is that the lands would not have been so bid off under a fair method of sale. If the method encouraged bidders, something like the value of the lands could be obtained.

Take again for example the items "Printing—Advertising" and "Collection Fee and Interest." These are fully described on page 100 of the Record. They are items provided for in the general levy of taxes. Still these special charges, under the circumstances, deprive Appellant in the case of Printing of over $400.00 per annum on the lands in question for there are over 1100 descriptions; and in "Expenses of Sale" deprive him of $800.00 and upwards per annum. They are special charges or taxes and entirely unwarranted for they are necessarily included in the general tax levy and have therefore been already once provided for.

Yet Counsel for Defendants says these illegal and excessive charges furnish no equitable ground of complaint and that Appellant shows no interest enabling him to complain.

Pages 65 to 74 of Defendants' Brief are devoted to the remedies at law which the Tax Law affords Appellant. the ,argument still proceeding upon the Assumption that the law is constitutional and valid. Counsel seems to have overlooked the principle of the Virginia Coûpon Cases, *supra*, that if the Complainant alleges the unconstitutionality of a law and Defendants seek to substi'ute the State or to justify their acts as performed under authority of the State, it is not sufficient to assert such authority of the State but they must go further and produce, a valid law of the State—one that is constitutional under both the State and Federal Constitutions.

This the defendants have not done and cannot do.

The remaining questions discussed in the concluding part of the Brief we think we have fully answered.

The relief to which Appellant is entitled depends upon the allegations of his Bill; not upon the relief he may have prayed. It is then immaterial tha: he may have asked to have his title quieted, if in fact that specific relief cannot be granted. His Bill may still be maintained and he be granted some of the relief prayed for, if the allegations of his Bill are sufficient. He has shown that the law is unconstitutional, the alleged taxes illegal, and his title thereby clouded. Is he not then entitled to have the law declared unconstitutional the taxes set aside and the Defendants enjoined?

The principle is thus stated in a Michigan case:

"To determine whether a bill is multifarious, we must look to the stating part of the Bill, and not to the prayer alone; for if, in his prayer for relief, complainant ask several things,

to some of which he may be entitled and to others not, the Bill is not on that account, multifarious, but he will, on the hearing, be entitled to that specific relief only which is consistent with the case made in the stating part of the Bill.,,

Hammond vs. Michigan State Bank, Walk. Ch., 214, 247.

Equity will, where an unlawful act has been performed, exercise its jurisdiction to place the parties in *statu quo.*

"The fact that after the bringing of injunction proceedings, and after the Court has acquired jurisdiction, Defendant completed the act sought to be restrained, is no defence to the proceedings, since the Court has power to place the parties in *statu quo.*"

New Haven Clock Company vs. Kochersperger, Treasurer, et. al. 175, Ill., 383.

We have been met, not on the merits, but by technical defences. The Appellant presents a meritorious case. In addition, we submit, he has answered every objection raised by defendants; and is supported in every instance by the decisions of this Court. We ask therefore that the decree of the Circuit Court be reversed.

JOHN A. McKAY,
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GEORGE W. WEADOCK,
Of Counsel.

23762

STATE OF MICHIGAN

GENERAL TAX LAW

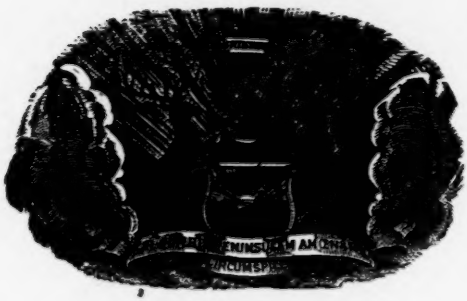
1893-1895-1897-1899

ACT 206, PUBLIC ACTS OF 1893, AS AMENDED BY ACTS 25, 154, 162 AND 229, PUBLIC ACTS OF 1895; ACTS 206, 214, 224, 225, 229, 240 AND 261, PUBLIC ACTS OF 1897; AND ACTS 31, 32, 83, 97, 107, 154, 169, 204, 215, 239, 262 AND 264, PUBLIC ACTS OF 1899.

WITH ANNOTATIONS AND CITATIONS FROM MICHIGAN REPORTS AND OTHER SOURCES, AND REFERENCES TO STATUTES AFFECTING THE ADMINISTRATION OF THE TAX LAW

COMPILED AND PUBLISHED UNDER THE SUPERVISION OF

ROSCOE D. DIX, AUDITOR GENERAL



BY AUTHORITY

LANSING, MICH.
ROBERT SMITH PRINTING CO., STATE PRINTERS AND BINDERS
1900

23763

PREFATORY.

This issue of the General Tax Law as amended is intended to include excerpts from all Michigan Supreme Court decisions that relate thereto or to similar provisions in the enactments that preceded it; reference to the principal statutes that are to be considered by assessing and collecting officers, including a synopsis of the provisions of general acts governing cities of the fourth class and villages, and of the school, drain and highway laws; extracts from some of the more directly applicable writings on taxation; a table of cases, authorities and statutes referred to herein, and some practical notes that may assist those who are charged with the execution of the law.

All references to sections of the General Tax Law refer to the notes to the sections as well as to the sections themselves, and may be intended to refer to either or both.

Cases having a direct bearing on the general laws or the particular statutes referred to herein, but not applicable to any question liable to arise under the general tax law, are not included herein. On the other hand many cases are cited that are not tax cases, but some enunciation therein has direct bearing on the general tax law.

In considering decisions quoted herein it will be remembered that they have been rendered under successive tax laws, and many which will very generally be recognized as affecting the principles involved in the present law should not be considered as having direct and complete application to the sections where they are found. The earlier decisions held taxes and sales void for many irregularities that would void neither taxes nor sales under the policy of the present law; yet these same irregularities, if practiced now, might and frequently do occasion expensive litigation and the elimination of a very considerable part of the taxes assessed, either on the hearing of the Auditor General's petition for decree of sale, or in actions brought earlier. For this reason, while it should not be considered that tax sales under the present law can be set aside for defects or irregularities that do not prejudice property rights, yet it is as important that the letter and spirit of the law should be carefully observed as it was when every minor departure from the exact performance of the letter of the law might be made the subject of contest, even years after the sale of the land.

All objections other than those that are jurisdictional are now foreclosed by the decree, and decisions holding otherwise will be found to have been rendered under laws in force prior to those of 1889 and 1893. This should be remembered in considering the cases quoted or referred to, and that non-jurisdictional objections cannot now be raised successfully after decree.

WHEN ACTS TOOK EFFECT.

Act 206 of 1893, approved June 1, 1893, was ordered to take effect June 12, 1893.

Act 25 of 1895 (amending Section 9), approved March 20, 1895, was given immediate effect.

Act 154 of 1895 (amending Sections 62, 71, 73, 74, 84, 87, 98, 106, 113, 120, 124, 127 and 135), approved May 18, 1895, took effect Aug. 30, 1895.

Act 162 of 1895 (amending Section 66), approved May 18, 1895, took effect Aug. 30, 1895.

Act 229 of 1895 (amending Sections 11 and 47), approved May 31, 1895, was given immediate effect.

Act 206 of 1897 (amending Section 108), approved May 29, 1897, took effect Aug. 29, 1897.

Act 214 of 1897 (amending Section 111), approved May 29, 1897, took effect Aug. 29, 1897.

Act 224 of 1897 (amending Section 87), approved May 29, 1897, took effect Aug. 29, 1897.

Act 225 of 1897 (amending Sections 54, 57, 61, 62, 63, 70, 71, 74, 78 and 79), approved May 29, 1897, was given immediate effect.

Act 229 of 1897 (adding Sections 140, 141, 142 and 143), approved June 2, 1897, took effect August 29, 1897.

Act 240 of 1897 (amending Section 131), approved June 2, 1897, took effect Aug. 29, 1897.

Act 261 of 1897 (amending Section 42), approved June 2, 1897, took effect Aug. 29, 1897.

Act 31 of 1899 (amending Section 66), approved April 6, 1899, was given immediate effect.

Act 32 of 1899 (amending Section 14), approved April 8, 1899, was given immediate effect.

Act 83 of 1899 (amending Section 87), approved May 25, 1899, was given immediate effect.

Act 97 of 1899 (adding Section 144), approved June 1, 1899, was given immediate effect.

Act 107 of 1899 (amending Sections 127, 128, 130, 131, and 133), approved June 9, 1899, was given immediate effect.

Act 154 of 1899 (amending Sections 21 and 22, and adding Sections 145, 146, 147, 148, 149, 150, 151, 152, 153, and 154), approved June 23, 1899, was given immediate effect.

Act 169 of 1899 (adding Section 138 and 139), approved June 23, 1899, was given immediate effect.

Act 204 of 1899 (amending Sections 140 and 141), approved May 17, 1899, took effect September 23, 1899.

Act 215 of 1899 (amending Section 47), approved June 1, 1899, took effect September 23, 1899.

Act 239 of 1899 (amending Section 18), approved June 15, 1899, took effect September 23, 1899.

Act 262 of 1899 (amending Sections 24, 41, 59, 61, 62, 67, 70, 73, 74, 78, 84, 89, 98 and 102), approved June 23, 1899, took effect September 23, 1899.

Act 264 of 1899 (amending Section 66), approved June 23, 1899, took effect September 23, 1899.

MAXIMS.

The authority to tax being fixed by the statutes must be strictly pursued.—Case v. Dean, 16 M. 12.

Taxes and assessments must be laid on principles of justice and equality.—Clay v. Grand Rapids, 60 M. 451.

Taxation for private purposes is unlawful.—Butler v. Saginaw Supervisors, 26 M. 22; Clee v. Sanders, 74 M. 692.

Taxes cannot be levied to accumulate funds for the future.—Midland v. Roscommon, 39 M. 424.

In paying taxes the citizen contributes his just and ascertained share to the expenses of the government under which he lives.—Black on Tax Titles 3.

The State alone possesses the power to authorize the assessment and levy of taxes and to establish rules therefor. A local custom which is opposed to the general policy of the State on the subject to which it refers is not valid in law.—Tremble v. Crowell, 17 M. 493.

A tax cannot be collected if not authorized by written law—Folkerts v. Power, 42 M. 283.

Without a valid assessment no subsequent step can have any color of validity.—Black on Tax Titles 89.

The assessor cannot legislate. He has to do solely with administering the law. As an officer of the county or of minor municipalities, he should remember that the county is responsible to the State for the regularity of taxes returned.—Auditor General v. Monroe Supervisors, 36 M. 71.

Every essential proceeding in a tax levy must be taken in conformity with the requirements of law, and must appear in some written and permanent form in the records of the bodies authorized to act upon them, a parol levy of taxes not being legally possible under our laws.—See Palmer v. Rich, 12 M. 414; Moser v. White, 29 M. 60; Mills v. Township of Richland, 72 M. 100, etc.

It is not sufficient that assessment in its various stages be regular in most things; it must be legal in all things.—See Tillotson v. Webber, 96 M. 144.

Statutes for the assessment and collection of taxes, as to what they require to be done for the protection of the tax payer, are mandatory and cannot be regarded as directory merely.—Clark v. Crane, 5 M. 151.

The provisions of the tax law must be strictly construed where a departure from them would prejudice the owner of the property taxed.—Houghton County v. Auditor General, 41 M. 28.

Township officers cannot ignore common sense and ordinary experience in discharging their duties.—Medina v. Perkins, 48 M. 67.

It is sometimes matter for serious regret that a court is compelled to declare a sale for taxes invalid where apparently no great injustice has been suffered; but when the necessity arises it is commonly because tax officers persistently disregard the limitations which are imposed by express statutes upon their authority.—Silsbee v. Stockle, 44 M. 561.

Every taxpayer is assumed to know the usual course taken to enforce payment directly, or in case of a return of delinquent property.—Louden v. East Saginaw, 41 M. 18.

Every owner of land is held to know the law. He knows that his land is subject to taxation; that he must pay his fair share of the public revenue and that if he fails to do so proceedings will be taken under the law against his land. It is his duty, therefore, to watch the proceedings provided for by the statute for the foreclosure of the lien and interpose any objection he may have to the validity of the tax.—Cole v. Shelp, 98 M. 56.

The policy of the law is that parties shall pay legal taxes even though there may be some irregularity in demanding them, and that they shall complain to the courts of those errors only which may injure them.—Stockle v. Silsbee, 41 M. 615.

If parties interested in the land which is liable to taxation are diligent in attending to the duty imposed upon them by the law, no hardship will be done them.—Berkey v. Burchard, 5 Det. Leg. News 723.

Statutes are to be construed in the light of previous history and surrounding circumstances; and their language is not to be measured by mathematical rules merely, but is subject, in the nature of things, to numerous implied exceptions or qualifications.—Kennedy v. Gies, 25 M. 83.

The primary object of all interpretation of statutes is to ascertain the real intent of the legislature; and while this intent must be inferred from the language used, it is not the meaning of the particular words only in the abstract, or their strictly grammatical construction alone that is to govern, but they are to be applied to the subject matter and general scope and purpose of the whole act, and to be considered with some

reference to the evil sought to be remedied, and in the light of other statutes in pari materia, as well as the principles of the common law.—Whipple v. Judge Saginaw Circuit, 26 M. 341.

Assessors cannot safely rely upon "saving clauses" and "curative provisions" in the tax law to protect them or the taxes assessed by them from the natural results of disregard of the requirements of the law. Such provisions are only applicable to irregularities.—Wright's Assessor's Manual 18.

GENERAL TAX LAW

OF THE

STATE OF MICHIGAN.

(Act 206, Public Acts of 1893, as amended by Acts 25, 154, 162 and 229 of 1895; Acts 206, 214, 224, 225, 229, 240, and 261 of 1897; and Acts 31, 32, 83, 97, 107, 154, 169, 204, 215, 239, 262 and 264 of 1899.)

AN ACT to provide for the assessment of property and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes, and for the inspection and disposition of lands bid off to the State and not redeemed or purchased; and to repeal Act No. 200 of the Public Acts of 1891, and all other acts and parts of acts in anywise contravening any of the provisions of this act.

The one object of the act is to provide for collection of taxes and the multiple character of the title does not bring it within the prohibition of Sec. 20, Art. IV., Constitution.—See Auditor General v. Stiles, 83 M. 460. The construction of titles covers that which is directly or indirectly connected with the subject named.—See People v. Gadway, 61 M. 290, cases cited 287. Not necessary to set out in title every means necessary to accomplish the end sought.—Callaghan v. Chipman, 59 M. 613. The purpose is accomplished when the law has but one general object fairly indicated in the title.—People v. Mahaney, 13 M. 481. 495; People v. Hurlbut, 24. M. 44; Stockle v. Silsbee, 41 M. 615; see also Auditor General v. Bay Co. Supervisors, 106 M. 662; and notes to Secs. 135 and 143. Omission of statement that object is also to punish violators does not render provisions therefor invalid.—Insurance Co. v. Raymond, 70 M. 485.

Property subject to taxation.

SECTION 1. (3824 C. L. '97.) *The People of the State of Michigan enact*, That all property, real and personal, within the jurisdiction of this State, not expressly exempted, shall be subject to taxation.

The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.—Sec. 11, Art. XIV. Constitution. A tax within the meaning of Art. XIV. is a charge for public uses.

Jurisdiction is co-extensive with territory.—People v. Tyler, 7 M. 161, 219. Territory includes lakes and rivers within limits of State.—Id. 228-9. All property is within the taxing power unless designedly put beyond it by the sovereign power of the State.—Robertson v. Commissioner State Land Office, 44 M. 274.

For exemptions specified in this act see Secs. 7 and 9.

EXPRESSLY EXEMPTED BY OTHER ENACTMENTS: Military bounty land while held by patentees or their heirs for three years after date of patent.—Ordinance of 1836, C. L. '97, p. 66. Cannot be held to mean three years from location.—People ex rel Throop v. Auditor General, 9 M. 134; Indian allotment lands allotted under Act of Feb. 28, 1887, as amended 1891.—Chap. 383, U. S. Stat. v. 24. Property of corporations exempt by reason of paying specific taxes.—See notes to Sub. 8, Sec. 7; shares in building and loan associations inc. under Act 50 of 1887, and mortgages and other securities held by such association.—7590 C. L. '97 (does not include shares in similar associations of other states); property of agricultural societies inc. under Act 80 of 1855, when used solely for the purposes of their incorporation.—See 5954 C. L. '97; for limitations; also Sub. 9, Sec. 7; certain properties of musical societies inc. under Act 128 of 1887.—8257 C. L. '97; lands, etc., of rural cemetery associations inc. under Act 12 of 1869.—8399 e. s. C. L. '97; real property of hospitals or asylums inc. under Act 242 of 1863.—8288 e. s. C. L. '97; property not exceeding in value of $100,000 of industrial and charitable schools inc. under Act 135 of 1867.—8280 e. s. C. L. '97; personal property of society of marksmen inc. under Act 33 of 1889.—7692 C. L. '97; property of incorporations for cultivation of art inc. under Act 3 of 1885.—8226 e. s. C. L. '97; homes for aged, etc., inc. under Act 52 of 1897.—8271 e. s. C. L. '97; property of women's auxiliary association of University of Michigan.—3980 C. L. '97; private burial grounds.—8417 C. L. '97.

OF REAL PROPERTY.

Real property defined.

SEC. 2. (3825) For the purpose of taxation, real property shall include all lands within the State, and all buildings and fixtures thereon, and appurtenances thereto, except such as are expressly exempted by law.

"Lands" and "real estate" include all rights thereto and interests therein.—50 C. L. '97. Includes standing timber.—Sovereign v. Ortman, 47 M. 181; Spalding v. Archibald, 52 M. 365; Williams v. Flood, 63 M. 487. And unsevered crops.—Coman v. Thompson, 47 M. 22; Knapp v. Wolverton, 47 M. 292; Preston v. Ryan, 45 M. 174.

Standing timber is assessable as realty, being an interest in the land.—Fletcher v. Township of Alcona, 72 M. 18; Williams v. Hyde, 98 M. 152. But nursery stock is assessable as personal property.—See Sub. 14, Sec. 8.

Where land is owned by one person and buildings thereon by another the two are to be separately assessed.—Cooley on Taxation, 367. Private buildings on lands of the United States or this State are assessed as personal property.—Sub. 7, Sec. 14. So are buildings on leased lands.—Sub 11, Sec. 8.

"Such as are expressly exempted by law" should be understood as meaning not merely "exempted" from taxation, but also such buildings and appurtenances as are expressly classified elsewhere in the general tax law as personal property.—Assessor's Manual 20. See Subs. 10, 11, 12, 14 and 16, Sec. 8. For real estate exemptions see Sec. 7 and notes to Sec. 2.

Riparian rights of owners of lands abutting on waters should be considered in the assessment of such lands and not assessed separately.—See cases cited in Boom Co. v. Adams, 44 M. 404. Water power should be assessed with the land on which the power is obtained as a part of the realty. So with mineral deposits or quarries and all that pertains to the land, consideration being given thereto in the determination of value.—See Sec. 27.

Real estate owned by railroads or union depot companies and not actually occupied in the exercise of their franchises is liable to taxation.—6277 C. L. '97. See also 3964-7.

Under provisions of this section the mooted question whether machinery in a building is a part of the realty is not, for the purposes of taxation, in issue.—Assessor's Manual 19.

RIPARIAN RIGHTS: Any erection which can lawfully be made in the water within the limits of riparian rights belongs to the riparian estate, Ryan v. Brown, 18 M. 196. Boundary between riparian rights is determined by extending a line from boundary at shore perpendicularly to the general course of the stream opposite that point.—Clark v. Campau, 19 M. 325. Riparian rights, unless expressly exempted, extend to the middle of the navigable channel, and cover any shallows or middle ground not shown in the government survey but lying between such channel and the shore.—Fletcher v. Thunder Bay Boom Co., 51 M. 277. As to riparian rights in the Great Lakes, see Lincoln v. Davis, 53 M. 375. Title of riparian owner extends to the middle line of the inland waters.—Webber v. F. & P. M. Boom Co., 62 M. 626; Ice and Coal Co. v. Ice and Coal Co., 102 M. 227. Owner of fractional division made so by an inland lake owns the soil under the water of said lake which should be included within the subdivision if its lines were fully extended.—Clute v. Fisher, 65 M. 48. Where the government has surveyed its lands along bank of river and has sold and conveyed them by government subdivisions, patent conveys title to all islands lying between the meander line and the middle thread of the river, unless previous to its issuance the government has surveyed such inlands as government subdivisions or has expressly reserved them where not so surveyed.—Butler v. Railway Co., 85 M. 246. Where the government does not meander an island or indicate an intention to set it apart, it passes as appurtenant

to the grant of the lands on the shore, and cannot at a subsequent time be surveyed and sold as an island.—Church v. Case, 6 Det. Leg. News, 837. Grantee of land bounded by a meandered river takes title to the middle thread of the main channel of the stream and may maintain his right to a so called "island" lying between such channel and the main land, unless it appears that the government ever surveyed or treated the intervening land as an island.—Gough v. Cougle, 118 M. 307.

Where and to whom assessed.

SEC. 3. (3826) Real property shall be assessed in the township or place where situated, to the owner if known, and also to the occupant, if any; if the owner be not known, and there be an occupant, then to such occupant, and either or both shall be liable for the taxes on said property, and if there be no owner or occupant known, then as unknown. A trustee, guardian, executor, administrator, assignee or agent, having control or possession of real property, may be treated as the owner. The real property which belonged to a person deceased, not being in control of an executor or administrator, may be assessed to his heirs or devisees jointly, without naming them, until they shall have given notice of their respective names to the supervisor, and of the division of the estate.

Assessments should be to the owner if known. If occupied and owner is unknown then to the occupant, if any. If neither is known and only in such case, assessment should be as "unknown." The owner is the person having the legal title, and assessment should be to the true owner if he can be discovered. In determining ownership, assessors are not bound to go behind the records; and if title is in litigation it is not for them to decide who is the owner.—Black on Tax Titles, 107. Land is properly assessed to one having title of record.—Loud & Sons Lumber Co. v. Hagar, 118 M. 452. If no one holds actual possession, the owner of the title has constructive possession.—Ruggles v. Sands, 40 M. 559. One in possession of land claiming it as his own, is bound to pay the taxes imposed upon it which become due during his possession.—Dubois v. Campau, 24 M. 360. Tenancy of any sort is a species of title.—Van Doozer v. Dayton, 45 M. 247. A life tenant should be assessed as owner during the continuance of life estate.—Jenks v. Horton, 96 M. 13; Austin v. Hyndman, 6 Det. Leg. News, 8. It is the duty of tenant of lands for life to pay the taxes.—Smith v. Blindbury, 66 M. 319. Where life tenant fails to pay taxes, title passes to the purchaser under tax sale, and remainder-man's remedy is against owner of life estate.—Watkins v. Green, 101 M. 493.

Occupancy might consist of cultivation and use without actual residence or might be by a tenant.—Cummings v. State Treasurer, 7 M. 366. To be an occupant it is not necessary that he should have his home upon the premises.—Tweed v. Metcalf, 4 M. 579. If a husband has the care and occupancy of the wife's land it may be assessed to him as occupant; but if they live apart and the husband has not the charge or possession of the land, it must be assessed to the wife.—Black on Tax Titles, 100. Payment of taxes in previous years under the same conditions may properly be considered in determining how person paying regarded his occupancy.—Hood v. Judkins, 61 M. 575.

Real estate held by a trustee, guardian, executor, administrator, assignee or agent should be assessed in his name as owner, but with the addition of the designation of his fiduciary capacity.—Assessor's Manual 22. See also Black on Tax Titles, 106. Assessment to estate by name is equivalent to assessment to heirs or devisees without naming them.—Dickison v. Reynolds, 48 M. 159. The designations "heirs" and "devisees" or "legatees" should not be confounded. The words are not synonymous and assessment to "heirs" has been held invalid in cases where the property was given to devisees.—Assessor's Manual 22.

Land held by two or more tenants in common should be assessed to all jointly, or undivided interests to each severally.—See Sec. 6. An assessment of land in a township where it does not lie is void, although it was not assessed in the proper township.—Taylor v. Youngs, 48 M. 268.

A mortgage conveys no title to the mortgagee.—Hogsett v. Ellis, 17 M. 351; Wagar v. Stone, 36 M. 364. Assessment and subsequent proceedings to enforce payment of the taxes does not estop the State from afterwards claiming lands as escheated lands.—Crane v. Reeder, 25 M. 303.

One cannot avoid taxation by the conveyance of his land to a third party, where the object of the conveyance is simply to avoid taxation and not to make a sale in good faith to the party taking the conveyance.—H. M. Loud & Sons Lumber Co. v. Elmer, 6 Det. Leg. News, 949.

See Secs. 4, 5, 6, 7, 11, 24, 29, 39, 99.

Homestead and part paid State lands.

SEC. 4. (3827) All licensed homestead lands, the fee of which is in the State, when the licensee is entitled to make final proof to obtain a patent for the same, shall be assessed and treated as real property. The interest in land of any person holding part paid certificates for the purchase of any State lands shall be assessed separate from other property. The assessment shall describe the land and shall state therein that the title is in the State. The taxes, if not paid to the township treasurer, shall be returned and collected as hereinafter provided.

The interest acquired under part-paid certificate of purchase of State lands is part of the individual property of the purchaser and is to be assessed as personalty, but separate from the general valuation of his personal property, and in the town where the land lies.—Robertson v. Land Commissioner, 44 M. 274. See Attorney General v. A. P. Cook Co., 6 Det. Leg. News, 805.

The provision of this section as to licensed homestead lands the fee of which is in the state is the same as the rule applied to lands homesteaded under United States statutes.

The county treasurer shall furnish lists of such lands and of the names of patentees and licensees to supervisors on or before April 10th.—Sec. 92. See Sec. 122; also 1461 and 3974-6, C. L. '97.

Corporation realty.

SEC. 5. (3828) The real property of a corporation shall be assessed to the name of the corporation as to an individual, if known, in the township or place where situated, or it may be assessed to the occupant or to any authorized agent if so requested of the supervisor.

A corporation whose property is taxable stands on the same footing as an individual under our taxing laws.—Graham v. St. Joseph, 67 M. 652.

Undivided interests.

SEC. 6. (3829) Undivided interests in lands owned by tenants in common, not being co-partners, may be assessed to the owners thereof, if so requested, and in the discretion of the supervisor.

If so assessed the undivided interests assessed to each must be specified. In assessing undivided interests the acreage should be given entire. For instance, the acreage in assessing the undivided half of the N. ½ of N. E. ¼ would be 80 acres, not 40.

Where purchasers of undivided half of wild timber lands under a contract silent as to possession and payment of taxes, lumber the land and receive half the benefits of the lumbering, they are liable for half of the taxes levied after the purchase.—Thompson v. Noble, 108 M. 26.

Husband and wife are not tenants in common of lands conveyed to them jointly.—Fisher v. Provin, 25 M. 347.

REAL ESTATE EXEMPTIONS.

Exemptions.

SEC. 7. (3830) The following real property shall be exempt from taxation:

U. S. property.

1. All public property belonging to the United States;

State property.

2. All public property belonging to the State of Michigan, except licensed homestead lands, part paid lands held under certificates, and lands purchased at tax sales, and still held by the State;

Municipal property.

3. Lands owned by any county, township, city, village or school district and buildings thereon, used for public purposes;

Realty of charitable, etc., associations.

4. Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions, incorporated under the laws of this State, with the

buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated: *Provided*, That such exemption shall not apply to fraternal or secret societies, but all charitable homes of such societies shall be exempt; Proviso.

5. All houses of public worship, with the land on which they stand, the furniture therein, and all rights in the pews, and also any parsonage owned by any religious society of this State and occupied as such; Churches and parsonages.

6. All lands used exclusively as burial grounds, and the rights of burial therein, and the tombs and monuments therein, while reserved and in use for that purpose: *Provided*, That the stock of any corporation owning such burial grounds shall not be exempt; Cemeteries. Proviso.

7. The real and personal property of persons who, in the opinion of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges; Poor persons.

8. The real property of corporations exempt under the laws of this State, by reason of paying specific taxes in lieu of all other taxes for the support of the State: *Provided*, The track, right of way, depot grounds and buildings, machine shops, rolling stock, and all other property necessarily used in operating any railroad in this State belonging to any railroad company, shall henceforth remain exempt from taxation for any purpose, except that the same shall be subject to special assessments for local improvements in cities and villages, and all lands owned or claimed by any such railroad company not adjoining the track of such company, shall be subject to all taxes; Corporations paying specific taxes. Proviso as to railroads.

9. Property owned exclusively by the State agricultural society, or any county or district agricultural society, and used by any such society exclusively for fair purposes; Agricultural societies.

10. All land dedicated to the public and actually used as a park, and any monument ground or any armory belonging to any military organization, and not used for gain or any other purposes. Parks, monument grounds, armories.

Exemption ought to receive a strict construction.—Cooley on Taxation, 205. Statutes providing for exemption from taxation must be understood as exempting only as therein specified and not otherwise. There are few questions upon which assessors should so carefully confine their acts to the strict letter or the unmistakable intent of the law as in the matter of exemptions. In Johnston v. City of Oshkosh, 27 N. W. Rep. 320, it was held when assessors omit property in good faith because they believe the legislature has enacted a law exempting such property, when it has not, it invalidates the assessment.

The language of the legislature in exempting from taxation is as much entitled to obedience as that imposing taxation.—Home and Day School v. Detroit, 76 M. 521. A construction will not be put upon a tax law which will enable a party for whom no purpose of exemption is expressed to escape taxation.—Philadelphia v. Ridge Avenue Railroad Co., 102 Pa. St. 190. A homestead is not exempt from taxation or from sale for taxes.—10,368, C. L. '97.

Exemption from taxation does not exempt from municipal taxes or local assessments.—Black on Tax Titles, 64, 81. Exemption by charter of certain unplatted lands from taxation for fire department purposes must be regarded, but does not exempt from taxation for interest on water works bonds.—Baldwin v. City of Hastings, 83 M. 639. Inferior municipalities (counties, townships, school districts, cities and villages) cannot make exemptions except expressly authorized by the State.—Black on Tax Titles, 30. Exemption of certain surveyed townships in a school district from a general school tax invalidates the levy.—Auditor General v. McArthur, 87 M. 457.

An agreement between a municipality and a corporation organized for the purpose of supplying the city with water, under which the city agreed to

pay a portion of the taxes which might be assessed against the company, made upon good consideration, does not create an exemption from taxation.—Auketell v. Hayward, 5 Det. Leg. News, 902. Exemption from taxation of a property employed in a business upon which a state bounty is paid is in its nature and purpose only a bounty law and not a contract and may be repealed at any time.—East Saginaw Mfg. Co. v. City of East Saginaw, 19 M. 259.

SUB. 1. Real property of the United States is not subject to taxation until sale or other disposition so as to divest the government of its title.—Black on Tax Titles, 9. See 1150-2 C. L. '97.

Lands the title to which still remains in the native Indians, or in the United States in trust for them, are not taxable by the State for any purpose.—Black on Tax Titles, 42. "Native Indian" synonymous with an Indian who is not a citizen or one holding tribal relations.—See Sub. 6, Sec. 2. Lands patented to a "not so competent" Indian under treaty prohibiting its alienation without the consent of the government is not subject to taxation.—Auditor General v. Williams, 94 M. 180. The equity of the purchaser of government land must be valid and complete before the land is taxable.—Black on Tax Titles, 37. But patent need not have actually issued.—See note to Sub. 2. The possessory interests which private individuals may hold in the public land of the United States for mining, agricultural or other purposes, is not subject to taxation by the State.—Black on Tax Titles, 40.

See notes to Sec. 1.

SUB. 2. The public property of the State includes the property of all public institutions supported by the State.—Auditor General v. Regents, 83 M. 467. See Mich. State Bank v. Hastings, Walker's Chan. Rep., 9. State lands are taxable as private property when the purchaser has become possessed of a perfect equitable title to the land though no patent is yet issued. But if any condition precedent remains to be fulfilled before the grantee becomes entitled to the fee, the land is not taxable to the purchaser as realty.—Assessor's Manual 25. For assessment of the interest in such lands see Sub. 10, Sec. 8.

Title of land escheated is in the state.—Crane v. Reeder, 21 M. 24.

SUB. 3. But when not so used, but rented to private persons, such realty is subject to taxation.—Black on Tax Titles 49. So also if neither rented nor used for public purposes. Such lands subject to local assessments for benefits only when legislative provision therefor is clear.

Property of county cannot be sold to enforce collection of sewer tax.—Big Rapids v. Supervisors, 99 M. 351. In Lansing v. Board of State Auditors, 111 M. 327, the provision of city charter providing for assessment of State property for police and fire protection was held to be unconstitutional, not being expressed in the title to the act. Land owned by Board of Water Commissioners of Detroit held to be exempt though rented, the act creating the board expressly providing that all lands of the board should be exempt without exception.—Board of Water Commissioners v. Auditor General, 115 M. 547.

SUB. 4. Benevolent, charitable, educational or scientific institutions must be organized chiefly if not solely for one or more of these objects. To claim exemption under this Sub. it is not enough that one of the objects is of that character.—Attorney General v. Common Council, 113 M. 388.

Building owned by corporation organized under Act 536 of 1865 "for the purpose of free reading room and library," which was leased for club purposes, not exempt.—Auditor General v. Women's Temperance Association, 5 Det. Leg. News 876. Exemption of real property of libraries used and occupied by them for the purposes of the organization does not include tenements under the same roof.—Det. Y. M. S'cy. v. Mayor, 3 M. 172. The fact that the building is so constructed that the parts leased to third party cannot be separated from the residue by definite lines is no obstacle to a valuation of such parts for purposes of taxation, having due reference to the taxable value of the entire property.—Black on Tax Titles 60. See Sisters of Charity v. Detroit, 9 M. 94.

The term "Scientific Institution" means an institution for the advancement or promotion of knowledge. A corporation organized under Chap. 213-8149-56, C. L. '97, "to establish, maintain and conduct a seminary of learning," the actual business of which has been the maintenance of such a seminary, is not taxable for its realty occupied by its school buildings.—Home and Day School v. Detroit, 76 M. 521. This evidently brings all colleges incorporated under the laws of this State within the provisions of this section.

The property of an unincorporated scientific institution, the benefit of whose library, museum, etc., is restricted to members is not exempt. A hospital is not excluded from the list of "charitable" institutions because persons of pecuniary ability are required to pay for what they receive, when not exacted as a means of gain.—Assessor's Manual 26.

INSTITUTIONS INCLUDED: Public art instit'ns inc. under Act 3 of 1885.—8226 C. L. '97. Association for establishing scholarships in University of Michigan.—8157 e. s. C. L. '97. Libraries and lyceums incorporated under Chap. 53, R. S. '46.—8164 e. s. C. L. '97. Polytechnic associations inc. under Act. 95, 1869.—8183 e. s. C. L. '97. Historical, biographical and geographical societies inc. under Act 156 of 1873.—8190 e. s. C. L. '97. Associations for intellectual, scientific, aesthetic, etc., culture inc. under Act 79 of 1879.—8196 e. s. C. L. '97. Engineering societies inc. under Act 232 of 1887.—8244 e. s. C. L. '97. Benevolent societies inc. under Act 155 of 1879.—8258 e. s. C. L. '97. Charitable societies inc. under Act 20 of 1855.—8264 e. s. C. L. '97. Homes for aged, infirm or indigent inc. under Act 52 of 1897.—8271 e. s. C. L. '97. Hospital and asylums inc. under Act 242 of 1863.—8288 e. s. C. L. '97. Michigan State

medical societies inc. under Act 169 of 1879.—7699 e. s. C. L. '97. Eclectic medical societies inc. under Act 58 of 1877.—7705 e. s. C. L. '97. Veterinary medical associations inc. under Act 56 of 1891.—7719 e. s. C. L. '97. Bar associations inc. under Act 107 of 1881.—7725 e. s. C. L. '97. Teachers' associations inc. under Act 117 of 1855.—7730 e. s. C. L. '97. Charitable societies inc. under Act 166 of 1899. Institutions of learning inc. under Act 390 of 1855.—8140 e. s. C. L. '97. See Home and Day School v. Detroit, 76 M. 521.

EXCEPTIONS: Property of industrial and charitable schools inc. under Act 135 of 1867 as amended by Act 50 of 1895 in excess of $100,000.00 is not exempt.—8284 C. L. '97. Real property of corporations for literary and scientific purposes inc. under Act 160 of 1895 not exempt. Act repeals act of 1865.—8170 e. s. C. L. '97. Real property of musical societies inc. under Act 128 of 1857 not exempt except where corporation is composed entirely of women not for profit but solely for study of music and to advance musical knowledge, and only on condition that no rental is derived from the building and that the society give at least two free musical entertainments during each year.—8250-7 C. L. '97. Property of societies for study of literature inc. under Act 200 of 1897 is not exempt.—8181 C. L. 1897. Property of associations for encouragement of fine arts inc. under Act 233 of 1865 is not exempt.—8204 e. s. C. L. '97. Such properties of ecclesiastical bodies inc. under Act 209 of 1897.—8297 e. s. C. L. '97, as are exempt are particularly defined in Sub. 5.

SUB. 5. Exemption of house of public worship applies only to taxes imposed under the general system of taxation and does not extend to assessments for paving or other local improvements.—Lefevre v. Mayor, 2 M. 586. Such part of a building as is used exclusively for religious purposes may be exempt from taxation and the part not so used may be subject to taxation.—Black on Tax Titles 73.

A church edifice which is no longer used as a place of public worship is not exempt. Churches owned by private persons and not by organized societies are not exempt; but the fact that the title to the church of an organized society is in the name of a trustee or trustees does not except it from exemption. Land owned by a church and not used for its purposes is not exempt, unless held with the purpose of building a church thereon. A diocesan residence is not exempt as a parsonage. A Young Men's Christian Association building is not exempt as a house of public worship.—Assessor's Manual 26-7.

SUB. 6. Improvements essential to the use and enjoyment of the land for the purposes of a cemetery are exempt. Land within the boundaries of a cemetery dedicated or acquired for burial purposes is exempt though not actually used therefor.—Black on Tax Titles, 75. But land owned by any burial ground association inc. under Act 87 of 1855.—8362 e. s. C. L. '97, and not being part of its burial grounds, is not exempt.—8397 e. s. C. L. '97. Old cemeteries are exempt where city or village ordinances prevent further interment.—Assessor's Manual 27.

SUB. 7. The exemptions must be determined by the board of review before certifying to the assessment rolls, and no general taxes on property so exempt should appear upon the tax roll.

SUB. 8. Includes plank road companies.—6560 and 6610 C. L. '97; river improvement co's.—6721 e. s. C. L. '97 (not 6750 e. s. or 6764 e. s.); railroad companies.—6277 C. L. '97, except such real estate as is not actually occupied in the operation of the road (see also 6221 C. L. '97); union depot companies inc. under Act 244 of 1881.—6376 C. L. '97; life insurance companies not incorporated under Michigan laws.—7205 C. L. '97 (other insurance companies paying specific taxes are not exempt thereby from taxation of their property within the State); telegraph, telephone and express companies, except such real estate as is owned and can be conveyed under the laws of this State and not actually occupied in the exercise of its franchises and not necessary in the proper operation of its business.—Act 179 of 1899 (see Attorney General v. Common Council, 113 M. 388). Does not include musical societies inc. under Act 128 of 1857. See 8257 C. L. '97. 3992 C. L. '97 superseded.

Section 14 of Act 39 of 1883—6902 C. L. '97, as amended by Act 231 of 1899, provides that corporations for constructing, etc., water courses may on or before second Monday in April of any year, elect to pay a specific tax in lieu of all general taxes upon the lands upon which water course is located and which shall be appurtenant thereto and the improvements thereon.

Only such lands of a railroad company as are held and presently used for railroad purposes are exempt from taxation, and the exemption does not apply to lands that have been acquired with a view of future use by the company.—Auditor General v. F. & P. M. R. R. Co., 6 Det. Leg. News 22.

Railroad land and buildings thereon belonging to the corporation which are leased to private person, company or firm for private business is liable to taxation even though by the terms of the lease the tenant is under obligations to perform certain services in his line of business for the railroad and to furnish a certain amount of freight annually for transportation over the railroad company's lines.—Black on Tax Titles 65. Land in railroad yards occupied by lumber company but no rental paid held not subject to taxation, it being shown that the land is used constantly by the company in the exercise of its franchise.—Auditor General v. F. & P. M. R. R. Co., 114 M. 682. An elevator erected by a railroad or union depot company on its lands and owned by the corporation as a grain warehouse in connection with its general business is a necessary equipment and exempt from ordinary taxation.—Detroit U. R. D. & S. Co. v. Detroit, 88 M. 347. Railroad hotels for general accommodation are not exempt.—Black on Tax Titles

67. A toll house owned by a plank road company and the lot on which it stands, if owned by the company, although not actually within its right of way, is exempt from ordinary taxation while used solely as a toll house and residence for its keeper.—Plank Road Co. v. Detroit, 81 M. 562.

SUB. 9. Where the track and horse barns upon fair grounds are rented to horse trainers and breeders, the proportionate value of such realty so leased is subject to assessment.—Assessor's Manual 28. See also 5954 C. L. '97. Includes horticultural societies.—5963 C. L. '97, and pomological and kindred societies.—5983 C. L. '97.

SUB. 10. Armories owned by military companies are not exempt if rented for other purposes for a consideration, nor would such part of an armory building so owned as is used for other purposes, but the proportionate value of such leased portion of the building and of the land on which it stands would be assessable.—Assessor's Manual 28.

OF PERSONAL PROPERTY.

Personal property defined.

SEC. 8. (3831) For the purposes of taxation, personal property shall include:

Moneys. 1. All moneys;

Annuities, royalties. 2. All annuities and royalties;

Goods, chattels. 3. All goods, chattels and effects within the State;

Boats. 4. All ships, boats and vessels and their appurtenances belonging to inhabitants of this State, whether at home or abroad;

Goods situate without State. 5. All goods, chattels and effects belonging to inhabitants of this State, situate without this State, except that property actually and permanently invested in business in another State shall not be included;

Credits. 6. All credits of every kind belonging to inhabitants of this State, over and above the amounts respectively owed by them whether such indebtedness is due from individuals or from corporations, public or private, and whether such debtors reside within or without the State;

Shares in corporations. 7. All shares in corporations organized under the laws of this State, when the property of such corporations is not exempt, or is not taxable to itself; or when the personal property is not taxed;

Bank shares. 8. All shares in banks organized within this State, under the laws of this State or of the United States, at their cash value, after deducting the assessed value of real property owned by and assessed to such banks;

Shares in foreign corporations. 9. All shares in foreign corporations, except national banks, owned by citizens of this State;

Interest in public lands. 10. All interests owned by individuals in lands, the fee of which is in this State or the United States, except as herein otherwise provided;

Improvements on leased lands. 11. All buildings and improvements situate upon leased lands, except where the value of the real property is also assessed to the lessee or owner of such buildings and improvements;

Public vaults. 12. Tombs or vaults built within any burial grounds, and kept for hire or rent, in whole or in part, and the stock of any corporation or association owning any such tombs, vaults or burial grounds;

Omnibus clause. 13. All other personal property not herein enumerated, and not especially exempted by law.

14. All nursery stock and trees while growing on any land or in preparation for replanting or in transit; Nursery stock.

15. All produce, seeds and grain on hand stored in warehouse or mill, and in transit, owned within this State; Produce.

16. The personal property of all gas and coke companies, natural gas companies, electric light companies, waterworks companies and hydraulic companies, to be assessed in the township, village or city where the principal works are located. The mains, pipes and wires of such companies laid in or along roads, lanes, streets or alleys shall be assessed as personal property in the township, village, or city where the same are laid or placed. The personal property of street railroad, plank road, cable or electric railroad or transportation companies, bridge companies, and all other companies not required to pay a specific tax to the State in lieu of all other taxes, shall be assessed in the township, village or city where its principal business office is situated, and the track, road or bridge of any such company shall be held to be personal property and may be assessed in the township, village, or city where the same is located, used or laid. Lighting and water companies. Transportation, road and bridge companies.

SUB. 3. See 2969-73 C. L. '97 as to taxation of copper.

SUB. 4. A vessel of a non-resident or a foreign corporation does not become subject to the taxing power of the State by engaging in business therein.—Roberts v. Charlevoix, 60 M. 197; Graham v. St. Joseph, 67 M. 652.

SUB. 6. Authorizes tax on credits held by resident trustee for non-resident beneficiaries.—Detroit v. Lewis, 109 M. 155. "Credits" includes all bills and accounts receivable, deposits, mortgages, loans, etc.

SUB. 7. Exemption of the corporate stock of a corporation is an exemption of its shares.—Cooley on Taxation 212. Intangible property like stock must always follow the domicile of the owner unless separated from it by positive law.—Howell v. Cassopolis, 35 M. 471.

In the construction of this section due consideration should be given to Section 11, which provides that all corporate property, except where some other provision is made by law, shall be assessed to the corporation, in the name of the corporation. See also Sec. 5 as to real property of corporations and note to Sec. 19.

If the property of a corporation is assessed to itself the shares of stock are not assessable to the individual holders thereof.—Attorney General Oren, March 19, 1900.

Shares assessable must be assessed at cash value. See 8549 C. L. '97 as to fraudulent transfer to avoid taxation. As to list of stockholders in certain corporations see 8567 C. L. '97.

Real estate of trust companies to be assessed to corporation and shares to be assessed at cash value after deducting value of real estate assessed to corporation as in case of banks.—6168 C. L. '97. Interest of shareholders in co-operative savings associations to be assessed to holders at residence in lieu of tax against associations.—7547 C. L. '97. Stock in stage company owned by other corporations to be deducted from stock of corporation owning and taxed only as capital of stage company.—6474 C. L. '97.

CORPORATIONS WHOSE PROPERTY IS TAXABLE TO THE CORPORATION BY PROVISION IN ACT OF INCORPORATION: Corporations for buying, etc., cattle, etc., inc. under Act 198 of 1887.—6040 e. s. C. L. '97. Corporations for buying and selling brood animals inc. under Act 100 of 1887.—6015 e. s. C. L. '97. Manufacturing companies inc. under Act 232 of 1885.—7037 e. s. C. L. '97. Publishing companies inc. under Act 97 of 1861.—7146-e. s. C. L. '97. Newspaper and book publishing associations inc. under Act 97 of 1861.—7146 e. s. C. L. '97. Newspaper and book publishing associations inc. under Act 299 of 1865.—7151 e. s. C. L. '97. Printing, publishing and book-making companies inc. under Act 304 of 1887.—7156 e. s. C. L. '97. Bridge companies inc. under Act 83 of 1851.—6629 e. s. C. L. '97; bridge with its appurtenances, gates and toll houses to be assessed to the company as personal property in the township in which tolls shall be received. Warehouse companies inc. under Act 26 of 1867.—6886 e. s. C. L. '97. Land purchasing and improvement companies inc. under Act 196 of 1889.—6868 e. s. C. L. '97. Canal and harbor companies inc. under Act 233 of 1875 (distinguished from river improvement companies inc. under Act 149 of 1869.—6721 e. s. C. L. '97, the latter paying specific taxes).—6696 e. s. C. L. '97. Rafting and booming companies inc. under Act 16 of 1864.—6523 e. s. C. L. '97. Co-operative associations inc. under Act 288 of 1865.—7465 e. s. C. L. '97. Summer home associations inc. under Act 39 of 1889.—7639 e. s. C. L. '97. Suburban homesteads, villa park and summer resort associations inc. under Act 69 of 1887.—7654 e. s. C. L. '97;

but lots sold are assessable to owners.—7662 C. L. '97. Societies for study of literature etc. incorporated under Act 200, of 1897.—8178 e. s. C. L. '97. Temperance Volunteers Association.—7953 e. s. C. L. '97. Grand Council Royal and Select Masters.—7980 e. s. C. L. '97. White Shrine of Jerusalem.—7983 e. s. C. L. '97. Rathbone Sisters.—8010 e. s. C. L. '97. Real Estate of Lutheran Bund.—8135 e. s. C. L. '97. Stage companies inc. under Act 29 of 1865.—6472 e. s. C. L. '97 (see note to Sub. 7.) Associations for the encouragement of the fine arts inc. under Act 233 of 1865.—8204 e. s. C. L. '97. Musical societies inc. under Act 128 of 1857.—8250 e. s. C. L. '97 (see note to Sub. 4, Sec. 7). Mutual provident association inc. under Act 275 of 1889.—7555 e. s. C. L. '97. Real estate of society of marksmen inc. under Act 73 of 1869.—7685 e. s. C. L. '97. Real estate of incorporated banks and trust companies.—6148 and 6168 C. L. '97. All mutual companies and associations not having shares of stock.

SUB. 8. Bonds of the United States are not liable and any portion of the capital stock of a bank so invested is exempt; but this does not exempt shares in a national bank though the capital stock of the bank is invested in United States bonds. The cash value of the shares of stock in a bank may be determined when the stock is not regularly quoted on a stock exchange by dividing the sum of the paid up capital and the surplus by the number of shares. In assessing the shares there must be deducted from each its proportion of the cash value of the realty that has been assessed to the bank.

The shares of stock issued by a bank include in their value all of the property of the bank, including its real estate, the value of which is to be deducted for separate taxation.—Lenawee Co. Savings Bank v. City of Adrian, 66 M. 273.

SUB. 9. See Graham v. Township of Joseph, 67 M. 652.

SUB. 10. See Sub. 2, Sec. 4 and Sec. 7 and notes thereto.

SUB. 11. A building erected on leased land is no part of the realty before the lease expires.—Osborn v. Potter, 101 M. 300.

SUB. 13. The tax law does not in express terms refer to the taxation of mortgages; but the provisions of this Sub. and of Sub. 6 leave no excuse for failure to assess their value to the owner.—Assessor's Manual 31. The note or bond and the mortgage that secures it are to be considered as one property. Attorney General v. Sanilac Supervisors, 71 M. 16. Assessment of notes or mortgages should be at their true cash value and not at what they purport to secure.—Attorney General v. Sanilac Supervisors, 71 M. 16.

Cars owned by individuals are not exempt from taxation because run over roads charged with specific taxes. Cars owned and used by a manufacturer are properly taxable with his stock in trade as appurtenances to the business.—Comstock v. Grand Rapids, 54 M. 641. Tram railways liable to taxation under general tax law.—Detroit Street Railway Co. v. Guthard, 51 M. 180.

The stock in trade and other appurtenances to the business of a liquor dealer are not exempt from taxation because of the payment of the liquor tax which partakes of the character of a license and is an exercise of the police power of the State. See Sherlock v. Stuart, 96 M. 193.

SUB. 16. Pipes of a water company laid on its own lands from pumping works to source of supply and to the city supplied, are a part of the realty and assessable accordingly and in the township where situated.—Water Company v. Frenchtown, 98 M. 431. The specific tax on pipe line companies, 6504 C. L. '97, is not in lieu of other taxes.

The general rules and manner of assessment only apply to these corporations to the extent that they do not conflict with the special provisions of this sub.—Opinion of Attorney General Oren, March 28, 1900.

PERSONAL PROPERTY EXEMPTED.

Exemptions.

SEC. 9. Am. Act 25 of 1895. (3832) The following personal property shall be exempted from taxation, to wit:

Charitable societies.

First, The personal property of benevolent, charitable, educational and scientific institutions, incorporated under the laws of this State: *Provided*, That such exemptions shall not apply to secret or fraternal societies, but the personal property of all charitable homes of such societies shall be exempt;

Public libraries.

Second, Of all library associations, circulating libraries, libraries of reference, and reading rooms owned or supported by the public, and not used for gain;

G. A. R., Y. M. C. A., etc.

Third, Of all posts of the grand army of the republic, sons of veterans, union veterans' unions, and of the women's relief corps connected therewith, of all young men's christian associations, and of women's christian temperance union associations, young people's christian unions, and other similar associations;

Fourth, Pensions receivable from the United States; Pensions.

Fifth, So much of the debts due or to become due as shall equal the amount of *bona fide* and unconditional debts by the person owing; Debts.

Sixth, The property of Indians who are not citizens; Indians.

Seventh, The library, family pictures, school books, one sewing machine used and owned by each individual or family, and wearing apparel of every individual; Library, sewing machine, wearing apparel, etc.

Eighth, Household furniture, provisions and fuel to the value of five hundred dollars to each household: *Provided*, No person paying board shall be deemed a householder; Furniture, provisions and fuel Proviso.

Ninth, The working tools of any mechanic not to exceed in value the sum of one hundred dollars: Mechanics' tools.

Tenth, Of all fire engines and other implements used in extinguishing fires, owned or used by any organized or independent fire company; Fire apparatus.

Eleventh, All mules, horses and cattle not over one year old, all sheep and swine not over six months old, and all domesticated birds; Young live stock.

Twelfth, Personal property owned and used by any householder, in connection with his business of the value of two hundred dollars. Personal property used in business.

Articles imported from foreign countries and the duties paid thereon do not lose their character as imports so as to become subject to state taxation as a part of the mass of property of the State until they have either passed from the control of the importer, or been broken up by him from the original cases; and the State tax is void whether based upon them distinctly as imports or as constituting a part of the importer's property.—Cooley on Taxation 90.

Payment of a liquor tax, a local license, or similar exaction levied in pursuance of the police power of the State or minor municipalities does not exempt from taxation a stock of goods to the possession of which such payment is incident. See Sherlock v. Stuart, 26 M. 193. Exemption from execution or from any other process, penalty or forfeiture does not exempt from taxation. Exemption of specified personal property should not be considered as exempting any property not so specified, even when it is, in the opinion of the assessor, of similar character.—Assessor's Manual 32-3. Abstract books referring to land titles have no intrinsic value and are not taxable.—Dart v. Woodhouse, 40 M. 399; Ferry v. Big Rapids, 67 M. 146.

SUB. 1. ACTS INCLUDED: Act 135 of 1867, "Industrial and charitable schools," exemption limited to $100,000.—8280 e. s. C. L. '97. Act 52 of 1897, "Homes for aged, infirm and indigent men or women."—8271 e. s. C. L. '97. Act 3 of 1885, "Public art institutions."—8226 e. s. C. L. '97. Act 188 of 1857, "Mechanics' associations."—7423 e. s. C. L. '97 (see also 7447 e. s.). Act 35 of 1897, "Colonial dames of America."—7863 e. s. C. L. '97. Act 160 of 1895 (Act 356 of 1895), "Corporations for literary and scientific purposes (exemption limited to $100,000)."—8170 e. s. C. L. '97. Act 128 of 1857, "Musical societies," (see Sec. 8257).—8250 e. s. C. L. '97. Act 169 of 1879, "Michigan State medical society."—7899 C. L. '97. Act 58 of 1877, "Eclectic medical society."—7705 C. L. '97. Act 56 of 1881, "Veterinary medical society."—7719 C. L. '97. Act 107 of 1881, "Bar associations."—7725 C. L. '97. Act 117 of 1865, "Teachers associations."—7730 C. L. '97. Act 390 of 1855, "Institutions of learning."—8140 C. L. '97. Act 191 of 1893, "Associations for establishing scholarships in University of Michigan."—8157 C. L. '97. Chap. 53 R. S. 1846, Libraries and lyceums.—8164 C. L. '97. Act 95 of 1869, "Polytechnic association."—8183 C. L. '97. Act 156 of 1873, "Municipal, historical, biographical and geographical societies."—8190 C. L. '97. Act 79 of 1879, "Associations for intellectual, scientific, etc., culture."—8198 C. L. '97. Charitable societies inc. under Act 166 of 1899. Act 232 of 1887, "Engineering societies."—8244 C. L. '97. Act 155 of 1879, "Benevolent societies."—8258 C. L. '97. Act 20 of 1855, "Charitable societies."—8264 C. L. '97. Act 242 of 1863, "Hospitals and asylums."—8288 C. L. '97. Act 209 of 1897, "Ecclesiastical bodies."—8297 C. L. '97. See note to Sec. 7 under head of "Exceptions." Societies for study of literature inc. under Act 200 of 1897, not exempt.—8181 C. L. '97. 3981 C. L. '97, is superseded by this Sec.

SUB. 3. The character of any organization claiming exemption under this provision must be in fact similar to those named in this sub-division, which is not intended to exempt the property of organizations whose name merely is similar to those designated.

SUB. 4. Pensions actually received and which have become merged with other personal property in possession of the pensioner on the second Monday in April, whether invested or uninvested, are not exempt.—Assessor's Manual 32.

SUB. 5. Does not entitle tax-payer to a reduction on account of liability under a lease for payment of rent for terms continuing into the future.—Beecher v. Common Council, 110 M. 456.

"Debts" is used in the first line of this Sub. as synonymous with the word "credits" as used elsewhere in the act.

SUB. 7. A private gallery of paintings cannot be considered as exempt under this Sub. "Family pictures" evidently mean family portraits.

SUB. 8. Musical instruments are not expressly included in the exemptions under this act. In Kehl v. Dunn, 102 M. 581, it was held that a piano was not "household goods, furniture or utensils" within the meaning of the statute exempting such property from execution.

SUB. 9. Tools of a dentist come within the meaning of "mechanics' tools."—Maxon v. Perrott, 17 M. 332.

SUB. 12. There are no decisions that may be a direct guide to the interpretation of this Sub., but the following under Sub. 8 of Sec. 10322 C. L. '97, are worthy of notice: "The articles need not be absolutely necessary, but must be adapted to aid in carrying on the business and actually in use for that purpose.—Kenyon v. Baker, 16 M. 373. May include lumber owned by carpenter though intended to build house for self.—Stewart v. Welton, 32 M. 59; or seed wheat by farmer.—Stilson v. Gibbs, 46 M. 215." Whether each member of a firm may claim exemption of property owned and used by firm and whether stock in trade may be held exempt under this Sub.-quere.

OF THE ASSESSMENT.

Annual assessment by supervisors.

SEC. 10. (3833) An assessment of all the property in the State, liable to taxation, shall be made annually in the several townships, villages and cities thereof by the supervisors of the several townships and wards, or in villages and cities where provision is made in the acts of incorporation or charter for some other assessing officer, then by such assessing officer, as hereinafter provided.

Supervisors, ex-officio assessors of townships.—2332 C. L. '97. The office of supervisor in cities may be abolished by the legislature at will and its functions conferred upon other municipal officers.—Attorney General v. Cogshall, 107 M. 181.

Duty of retiring public officer to deliver books and papers of his office to successor.—9843 e. s. C. L. '97.

Personal tax cannot be assessed against a non-resident; nor can property be taxed unless it has an actual situs within the State so as to be under the protection of its laws.—Graham v. Township of St. Joseph, 67 M. 652.

See Secs. 13, 14, 18 and 107.

SYNOPSIS OF ACT 215 OF 1895 PROVIDING FOR INCORPORATION OF CITIES OF THE FOURTH CLASS, 2956-3371 C. L. '97: Includes all cities having less than ten thousand population, 2956. Liabilities of village incorporated as city under this act deemed liabilities of the city and all taxes levied and uncollected at the time of the change to be collected as if such change had not been made, 2974. Election of treasurer, 2988; of supervisors, 2989. Appointment of assessor, 2990. City clerk to report amount of taxes to city treasurer, 3029. City treasurer—duties and compensation, 3033. Duties of supervisors in regard to taxes, 3048. Salary of treasurer and compensation of supervisors, 3060. Imposition of taxes or assessments requires two-thirds vote of aldermen elect, 3068. Licensing transient traders—proviso as to assessment of stock, 3107 Sub. 39. Assessment—for expense of abating nuisance, 3127; for sewers, 3161-6, 3169; for streets, 3174, 3178-9; for paving and improvements, 3180-2; for sidewalks, 3190. Special assessments, 3192-3, 3194, Am. Act 136 of 1899, 3195-3221. Appropriation of private property—assessment of benefits, Sec. 124, Am. Act 136 of 1899. (Entire Chap. 25 of Act 215 of 1895, amended by this Act.) Fiscal year—authority to raise taxes—funds—limit of taxation—apportionment—time of collection—voting taxes, etc., 3289-3317. Assessment by supervisor—proviso as to assessor, 3318-20. Equalization and review, 3321-2, Am. Act 136 of 1899, 3323. Certification of rolls, delivery to city clerk, 3324. Certification to county clerk of taxes to be raised, 3325. Apportionment and equalization by board of supervisors, 3326. Certification of special assessment to supervisors or assessor, 3327. Assessment roll—how made, 3328. Certification of taxes by supervisor to city clerk—bond of city treasurer—delivery of roll, 3329. Warrant, 3330. Lien, 3331. Notice—collection fee—collection, 3332, Am. Act 136 of 1899. Enforcement of collection as in general tax law, 3332-7. School taxes, 3352-3,3356.

Sec. 1, Chap. XXXI, providing for city assessor, is permissive merely and unless assessor is appointed as therein provided assessment will be made by a supervisor.—Ostrander v. Board of Supervisors, 111 M. 64.

CITIES GOVERNED BY SPECIAL CHARTER: Adrian, Alpena, Ann Arbor, Battle Creek, Bay City, Belding, Cadillac, Charlotte, Cheboygan,

Clare, Coldwater, Detroit, Eaton Rapids, Flint, Gladstone, Grand Ledge, Grand Rapids, Holland, Hudson, Ionia, Ironwood, Ishpeming, Jackson, Kalamazoo, Lapeer, Lansing, Manistee, Marshall, Marquette, Mason, Menominee, Muskegon, Negaunee, North Muskegon, Port Huron, Saginaw, Sault Ste. Marie, Traverse City, Three Rivers, West Bay City, Ypsilanti.

Corporate property, how and where assessed.

SEC. 11. Am. Act 229 of 1895. (3834) All corporate property, except where some other provision is made by law, shall be assessed to the corporation as to a natural person, in the name of the corporation. The place where its office is located in its articles of incorporation shall be deemed its residence: *Provided*, Its business is actually transacted at such office; but if it shall establish its principal office in any other place than the place named in its articles of incorporation, then the place where it transacts its principal business shall be deemed its residence for all the purposes of this act. If there be no principal office in this State, then at the place in this State where such corporation or agent transacts business: *Provided further*, That all the personal property of all corporations heretofore or hereafter organized under the laws of this State for the purpose of engaging in maritime commerce or navigation shall be assessed only in the city, village or township which is stated in their original articles of association or in any amendment thereof heretofore or hereafter made, to be the location of their general office for business. The property of corporations paying specific taxes shall be exempt, as to the property covered by such taxation, except when otherwise provided by law. All other property of such corporation shall be taxed under this act. In computing the taxable property of insurance companies organized under the laws of this State, the value of the real property on which a company pays taxes shall be deducted from its net assets above liabilities, as determined and shown by the last report of the Commissioner of Insurance, and the remainder shall be the amount of personal property for which the company shall be assessed.

Proviso—marine property.

Property paying specific taxes.

Insurance companies.

The provisions relative to the time, manner and place of assessment of taxes are mandatory; but owner cannot avoid assessment at actual residence by claiming residence elsewhere for the purpose of escaping taxation.—Crittenden v. Mt. Clemens, 86 M. 220. Statement in articles of association of a corporation of the place where its office for business is located is not conclusive against the State for the purposes of taxation. A corporation must have a local habitation and cannot fix a nominal domicile in one place while its actual domicile is in another and thus avoid taxation at the place of actual habitation.—Detroit Transporation Company v. Assessors, 91 M. 382. 1529-30 and 6985 C. L. '97 repealed by Act 139 of 1891. Mining properties are taxable under provisions of this act.

In Michigan Dairy Company v. McKinlay, 70 M. 574, corporate property was assessed in corporate name and to its manager. Held that alternative assessments harmed no one, taxes being paid except on personal estate, for which property of the corporation was sold.

Copartnership property.

SEC. 12. (3835) For the purpose of assessing property and collecting taxes, a copartnership shall be treated as an individual, and whenever the name of the owner or occupant of property is required to be entered upon the assessment roll, if such property is owned or occupied by a copartnership, the firm name shall be used. A copartnership shall be deemed to reside in the township where its business is principally carried on. Each partner shall be liable for the whole tax.

As to partnership lands, possession of surviving partner, see Merritt v. Dickey, 38 M. 41. Surviving partner has title to personal assets of the firm until affairs of partnership are settled.—9354 C. L. '97. Assessments should be in the firm name in case of the property of a firm one member of which has died, if before the partnership business is closed out. In such case, while the legal title rests in the surviving partner, it is not his absolutely, but held by him only for the purpose of closing the partnership estate.—Blodgett v. Muskegon, 60 M. 580. In Sage v. Burlingame, 74 M. 120, a co-partnership was held liable for taxes on lands belonging to one member of the firm and assessed to the firm by direction of its agents.

Partnership property alleged to be held in joint tenancy, is held to have been properly assessed to partnership.—Hubbard v. Winsor, 15 M. 146. The provision that partnership property shall be assessed in the firm name is directory and must be construed in connection with the provision that no tax shall be held invalid on account of having been assessed in the name of some other person than the owner.—Hill v. Graham, 72 M. 659.

See Sec. 99.

Personal property, where assessed.

SEC. 13. (3836) All personal property, except as hereinafter provided, shall be assessed to the owner in the township in which he is an inhabitant, on the second Monday of April, of the year for which the assessment is made.

In Beecher v. Common Council of Detroit, 114 M. 228, relator claimed residence in Negaunee and voted there, but owned and occupied house in Detroit for two years and was assessed in latter city on personal property which was not assessed elsewhere. Held subject to assessment in Detroit. The holding was the same in the City of Detroit v. Macier, 117 M. 76, a case similar to the foregoing and in which the court held that the finding of a jury that one assessed for taxes was a resident was conclusive.

Title to personal property in the possession of an officer at the time fixed for assessment, under attachment by creditors, remains in the owner and is legally assessed to him.—Township of Kalkaska v. Fletcher, 81 M. 446.

A mortgage must be taxed to the owner where he lives, not where the land mortgaged is.—Latrobe v. Baltimore, 19 Md. 13.

See Sec. 10; also 3969-73 C. L. '97.

Exceptions.

SEC. 14. (3837) Am. Act 32 of 1899. The excepted cases referred to in the preceding section are as follows, viz.:

Non-residents' property.

1. All goods and chattels situate in some township other than where the owner resides shall be assessed in the township where situate, and not elsewhere, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for sale of property, shop, office, mine, farm, place of storage, manufactory or warehouse therein, for use in connection with such goods and chattels: *Provided*, That the procuring any such property to be manufactured upon contract shall be deemed the hiring a mill or manufactory within the meaning of this section.

Proviso.

Animals.

2. All animals kept throughout the year in some township other than where the owner resides shall be assessed to such owner, or the person in possession, in the township where kept.

Bank shares.

3. All shares in banks shall be assessed to their owners in the township, village or city where the bank is located: *Provided*, That the shares owned by a person residing in the county where the bank is located shall be assessed in the township or city where he resides.

Proviso.

Property of minors, etc.

4. The personal property of minors under guardianship shall be assessed to the guardian in the township where he resides, and the personal property of every other person under guardianship shall be assessed to the guardian in the township where the ward resides.

Estates of deceased persons.

5. The personal property belonging to the estates of deceased persons, in the hands of executors or administrators,

shall be assessed to them in the township and in the school district where the deceased last dwelt, until they shall give notice that the estate has been distributed to the parties interested. If such deceased was a non-resident of the State such property shall be assesssed in the township where situated, to such executors or administrators, or to the person in possession.

Assessment to trustee, agent or pledgee.

6. Personal property under the control of a trustee or agent, whether a corporation or a natural person, may be assessed to such trustee or agent in the township where he resides, except as otherwise provided. Personal property mortgaged or pledged shall be deemed the property of the person in possession thereof and may be assessed to him.

Property on public lands.

7. All personal property of any person situate upon, also all buildings situate and being upon the lands of the United States, or of this State, shall be deemed personal property for the purposes of taxation and assessment, and shall be assessed as personal property, to the owner or occupant thereof, in the city, village or township in which such lands are situated, and such buildings shall be subject to sale for taxes in the same manner as herein provided for the sale of personal property: *Provided, however*, It shall not be necessary to remove any such buildings for the purpose of sale.

Proviso.

Non-residents.

Forest products.

8. Personal property of non-residents of the State, and all forest products owned by residents or non-residents, or estates of deceased persons, shall be assessed in the township or ward where the same may be, to the person having control of the premises, store, mill, dock, yard, piling ground, place of storage, or warehouse where such property is situated in such township, on the second Monday of April of the year when the assessment is made, except that where such property is in transit to some place within the State it shall be assessed in such place, except that where such property is in transit to some place without the State it shall be assessed at the place in this State nearest to the last boom or sorting gap of the stream in or bordering on this State in which said property will naturally be last floated during the transit thereof, and in case the transit of any such property is to be other than through any water course in or bordering on this State, then such assessment shall be made at the point where such property will naturally leave the State in the ordinary course of its transit; and such property so in transit to any place without the State shall be assessed to the owner or the person, persons or corporation in possession or control thereof, and in case such transit will pass said logs through the booms or sorting gaps, or into the places of storage of any person, persons or corporation operating upon any such stream, then such property may be assessed to such person, persons or corporation; and the person, persons or corporations so assessed for any such property belonging to a non-resident of this State shall be entitled to recover from the owner of such property, by a suit in attachment, garnishment or for money had and received, any amount which the person, persons or corporation so assessed is compelled to

Forest products in transit.

Destination without the state.

Recovery of taxes paid.

Lien.

pay because of such assessment, and shall have a lien upon said property as security against loss or damage because of being so assessed for the property of another, and may retain possession of such property until such lien is satisfied: *Provided, further,* That any owner or person interested in said property may secure the release of the same from such lien by giving to the person, persons or corporations so assessed a bond in an amount double the probable tax to be assessed thereon, but not less than the sum of two hundred dollars, with two sufficient sureties, conditioned for the payment of such tax by said owner or person interested, and the saving of the person, persons or corporation assessed from payment thereof, and from costs, damages and expense on account of his non-payment, which bond as to amount and sufficiency of sureties shall be approved by the county clerk of the county in which the assessment is made.

Proviso.

SUB. 1. See Township of Kalkaska v. Fletcher, 81 M. 446. Logs in camp are taxable there if there is an office and building for local business.—Ryerson v. Muskegon, 57 M. 383. See also Sub. 8.

Lumber owned by non-resident corporation and piled on dock lawfully, assessed to said corporation as custodian of the dock, though part was claimed to have belonged to others. Not necessary that part claimed to have belonged to other party should have been assessed to corporation as agent.—Sec. 24 does not limit authority conferred upon assessing officer so as to require him to ascertain whether the property is held by such person as agent, guardian or otherwise.—That one who has control of the dock for the purpose of placing lumber thereon has sold part of the lumber placed upon it to another person who is authorized to remove it does not take from the former the control of that part of the dock containing the lumber sold so as to prevent the assessment of such lumber to the seller.—Spanish River Lumber Co. v. Bay City, 113 M. 181.

Personal property belonging to a partnership is assessed in the locality where it is if the firm has its place of business there.—Williams v. Saginaw, 51 M. 120.

SUB. 3. Real estate owned by banks to be assessed to the corporation.—6148 C. L. '97; and shares to be assessed at cash value as herein provided after deducting the value of the real estate assessed to the bank. See also Howell v. Cassopolis, 35 M. 471. A state statute providing that shares in banks shall be taxed to shareholders, but requiring the bank to pay the taxes (Sec. 46) and authorizing it to collect from shareholders does not tax the bank, but its shares and is valid.—Black on Tax Titles 8. Bank stock certified by county clerk to supervisor who has no right to assess it may be assessed to owner where legally assessable though not certified to supervisor. —Crittenden v. Mt. Clemens, 86 M. 220.

R. S. of U. S. Sec. 5219 authorizes the taxation of national bank stock in the hands of individuals in such manner and place as the State may determine, subject only to the conditions that the rate shall not exceed that of taxation on other moneyed capital of citizens and that non-residents of the State holding stock shall be taxed in the city or town where the bank is located.

A village charter authorizing the taxation of "all property-real and personal within the limits of said village" not exempt from taxation for county and township purposes does not warrant the taxation by the village of the shares of shareholders who reside in another township in the same county.—Howell v. Cassopolis, 35 M. 471.

See Sec. 129.

SUB. 5. A legatee cannot be assessed for a legacy not yet due and in the hands of the executor.—Herrick v. Big Rapids, 53 M. 554. The assessment of a guardian upon an undistributed legacy to his minor ward is invalid.—Barstow v. Big Rapids, 56 M. 35. Supervisor who assesses land to estate after administration and discharge of executors, instead of to devisees who are the owners of the land, fails to assess as contemplated by the statutes.—Fowler v. Campbell, 100 M. 398. Sub. does not include forest products. See Sub. 8.

See "Suit for taxes," notes to Sec. 47.

SUB. 6. Securities belonging to a resident of the State, but in custody of an agent living in a different town, if assessed to both, assessment to owner takes precedence.—Curtis v. Richland, 56 M. 478. See Sec. 8 and "Pawn brokers," Sec. 19.

SUB. 8. Standing trees are not forest products.—Fletcher v. Township Alcona, 72 M. 18. See also Avery v. DeWitt, 72 M. 25, and note to Sec. 2. A contract for the sale of lumber providing it should belong to the vendor until shipped, is properly assessed to vendor if before shipment.—Hovey v. Gow, 81 M. 314. Timber cut under a contract that buyer was to cut and remove

within five years reverted to seller if left on land after expiration of the period.—Gamble v. Gates, 97 M. 465.
The provision relative to payment by one in possession and his remedy has some similarity to one in the law of 1853.—See Sears v. Cottrell, 5 M. 251.

Logs, etc., in transit.

SEC. 15. (3838) All forest products in transit on the second Monday in April in each year and thereafter found in the waters or streams of this State or on the banks or shores of any lake, pond or stream of this State, when the same is not at the place where it is to be manufactured, shall be held to have a place of destination at the sorting grounds of the rafting and driving agents or booming company nearest the mouth of the stream, unless the contrary shall be made to appear by the owner or party having the same in charge: *Provided*, That all lumber, logs, timber, lath, pickets, shingles, posts, cordwood, tanbark, telegraph or telephone poles, or railroad ties, that may be piled or left in any yard, railroad reserve, or in any shed, shall not be deemed in transit, but shall be assessed to the person or corporation having control of the yard, railroad reserve, shed or place of storage where the same may be situated at the time provided by law for taking such assessment.

Proviso.

Logs and lumber piled along the railroad track awaiting the convenience of the owner or facilities for shipment are not in transit and are assessable where situated; and in such case the fact of the existence of contracts to load or that some event has transpired to prevent shipment or that owner intends to ship in the near future should have no weight.—Maurer v. Cliff, 94 M. 194. Logs piled during the winter on the ice of a lake close by a railroad awaiting facilities for shipment by rail are not in transit, but are assessable where situated.—Plainfield Township v. Sage, 107 M. 19. Lumber piled on leased ground awaiting shipment properly assessed there.—Wood v. Judkins, 61 M. 575.
Lumber at railway station for transit merely is not taxable at that place as property in storage.—Monroe v. Greenhoe, 54 M. 9. Logs placed in river or lake for the purpose of shipment, but not for storage or for a definite time nor to await a market, and which were frozen in the ice upon the lake at the time of assessment were held to be in transit, it appearing that such transit was in progress when suspended by the close of the open season.—Pardee v. Freesoil, 74 M. 81. Where forest products are on banks or shore, and not at place of manufacture, destination is at sorting grounds unless owner makes contrary to appear.—Elk Rapids Iron Co. v. Township of Helena; Same v. Township of Milton, 117 M. 211.
Logs banked into a stream, and only waiting time of high water to be floated to destination or sorting grounds, and which are treated by the owners as in transit do not fall within the provision as to lumber and logs piled or left in yard, shed or any other place in the township where the same may be at the time for assessment.—Corning v. Masonville, 74 M. 177. Further as to forest products in transit, see Boyce v. Cutter, 70 M. 539.
An assessment made on property which is not assessable is void, as on logs in transit and so known to the assessor and assessable at place of destination.—Brooks v. Township of Arenac, 71 M. 231.
See 5082 C. L. '97 relative to marking floating logs and timber. Logs bearing recorded mark shall be presumed to belong to party in whose name mark is recorded.—5085 C. L. '97.

Supervisor to view logs, etc.

SEC. 16. (3839) It shall be the duty of the supervisor of the township in which any such saw logs, timber, railroad ties, telegraph poles or tanbark, cut prior to the time of taking the annual assessment, may be banked or piled, or that may be in transit, to ascertain the amount of such property which may be or may have been in his township or assessment district at any time during the month of April in each year, liable to assessment, by actual view of the same, as far as practicable, and to fix the value of such property, and to assess the same to the owner thereof as herein provided.

See Secs. 14 and 15.

Location of personal property.

SEC. 17. (3840) No change of location or sale of any personal property, after the first day of May in any one year shall affect the assessment made in such year. As between school districts and road districts the location of personal property for taxation shall be determined by the same rules as between assessment districts: *Provided*, That whenever the owner or occupant shall reside upon contiguous tracts or parcels of land which lie in two or more assessment districts, then the personal property of such owner or occupant shall be assessed in the assessment district where such owner or occupant resides at the time the assessment is made.

ASSESSMENT, HOW MADE.

Duties of assessor.

SEC. 18. (3841) Am. Act 239 of 1899. It shall be the duty of each supervisor or other assessing officer as soon as possible after entering upon the duties of his office, or as may be directed and required by the provisions of any acts of incorporation of any city or village making special provision for such assessment, to ascertain the taxable property of his assessing district, and the persons to whom it should be assessed and their residences. For this purpose he shall require every person of full age and sound mind who the supervisor or assessor believes has property which is not exempt from taxation, to make and subscribe to a true and correct written statement, under oath, administered by such supervisor or assessing officer, or other officer qualified to administer oaths under the laws of this State, of all the taxable property of such person, firm or corporation, whether owned by him or it or held for the use of another, and it shall be the duty of every such person, firm or corporation, to make such statement under the following form of oath, duly administered by the supervisor or assessing officer:

Shall require sworn statement.

Form of oath.

STATE OF MICHIGAN, } ss.
County of..... }

....., being duly sworn, deposes and says that the above is a full and true statement of all the taxable property owned by him liable to assessment in this assessing district.

(Signed).....

Dated this.....day of.....A. D. 18.....

Subscribed and sworn to before me this..... day of.....A. D. 18....

.....
Supervisor (or assessor).

Proviso.

Provided, That any person having no property which is not exempt, if required to take an oath by the supervisor or assessor, may take the following oath:

No property.

STATE OF MICHIGAN, } ss.
County of..... }

....., being duly sworn, deposes and says that he has no property or effects liable to taxation.

Dated this.....day of.....
18....

(Signed).....

Subscribed and sworn to before me this.....day of.....A. D. 18..

.....
Supervisor (or assessor).

The provision making it the duty of supervisors to require every person of full age and sound mind, etc., to make, subscribe and verify a statement of the taxable property owned by him or held by him for the use of another is mandatory.—Supervisor need not visit personally such persons, but may mail blank statement with notice to appear before him and verify the same.—Turner v. Circuit Judge, 95 M. 1.

Assessor cannot properly make an assessment against known facts.—Brooks v. Township of Arenac, 71 M. 231. Actual knowledge, however acquired, dispenses with the necessity for notice.—Jones v. Iron Co., 96 M. 98. Omission in statement does not justify the assessor in neglecting to assess property which he knows to have been omitted. It is the duty of the assessor to diligently inquire as to the taxable property within his jurisdiction.

Supervisor may require predecessor to deliver to him the books and papers belonging to the office.—Schneider v. McIvor, 58 M. 511.

One holding taxable property in more than one capacity should make a separate statement in each capacity. If he is guardian of an infant, trustee of a bankrupt estate, administrator of the estate of a deceased person and executor of another, he may be required to make a statement of his own property and also separate statements of the property held by him in his several fiduciary relations.—See Sec. 24.

When a village charter does not require an assessor to require a sworn statement of taxable property, a village tax assessed without assessor requiring such statement to be made is not invalidated thereby though the general tax law requires it for general assessment.—Lumber Co. v. Village of Oscoda, 97 M. 221.

Supervisors authorized to administer oath.—2337 C. L. '97; and may put any person under oath on any statement made to them. Authority of public officers to administer oaths in certain cases.—10396 C. L. '97.

See Secs. 100, 118, 150.

Assessors' blanks.

SEC. 19. (3842) In taking such assessment the supervisor or assessor shall use one of the following blank forms, as may be necessary:

Bankers and brokers.

Property of Bankers and Brokers.—The principal or accounting officer of every bank whose capital is not represented by shares of stock, and every private banker, broker or stock jobber shall make out and deliver to the assessor a statement which he shall verify by oath, showing:

Money.

1. The amount of money on hand and in transit;

Funds subject to draft.

2. The amount of funds in the hands of other bankers, brokers, or other persons, subject to draft;

Checks, etc.

3. The amount of checks and other cash items not included in either of the preceding items;

Bills receivable.

4. The amount of bills receivable, discounted or purchased, and other credits due or to become due;

Bonds and stocks.

5. The amount of bonds and stocks of every kind except United States bonds, and shares of capital stock of corporations or companies held as an investment or in any way representing assets;

Other property.

6. All other property appertaining to said business other than real estate;

Deposits. 7. The amount of all deposits made with them by other parties;

Accounts payable. 8. The amount of all accounts payable, other than current deposit accounts;

Real estate. 9. The description and value of all real estate owned by him or them.

Manner of determining personalty. The aggregate amounts of the seventh and eighth items shall be deducted from the aggregate amounts of the first, second, third and fourth items, and the remainder, if any, shall be assessed as moneys. The amount of the fifth item shall be assessed as stocks and bonds, and the sixth item shall be assessed the same as other similar property, and the assessor shall make a separate entry of each of these amounts (separate from the assessment of real estate) and the whole shall make up the aggregate personal assessment of such person, party or corporation.

Pawnbrokers. *For Pawnbrokers.*—Every person or company engaged in the business of receiving property in pledge or as security for money or other consideration or thing advanced to pawner of pledger, shall be held to be a pawnbroker and shall be required to make a statement and return under oath, reciting:

Stock in trade. 1. The value of all stock in trade actually owned by him or them and the true cash value thereof;

Pledges. 2. The amount and value of all property held in pawn for any pawner, pledger or customer;

Amount loaned. 3. The aggregate amount of money consideration or value paid and advanced by such pawnbroker thereon.

Value of pledges. And the amount of the true cash value of all such property, less the amount of consideration or value paid, shall be assessed as the property of such person or corporation.

Companies. *Property of Companies.*—The president, secretary or principal accounting officer of any company or association, incorporated or unincorporated, except railroad, insurance and telegraph companies and banking corporations, the taxation of which is specifically provided for by law, shall make out and deliver to the assessor a sworn statement setting forth the following:

Name, etc. 1. The name and location of the company, corporation or association;

Capital stock. 2. The amount of capital stock authorized and the number of shares into which the same is divided;

Actual capital. 3. The amount of capital actually paid in;

Value of stock. 4. The market value of the stock, or if they have no market value then the actual value of the shares of stock;

Personal property. 5. The cash value of all its personal property, giving each kind separately as far as practicable;

Indebtedness. 6. The total of all *bona fide* indebtedness, except indebtedness for current expenses, excluding from such expenses all amounts paid for the purchase or betterment of said property;

Real property. 7. The description and value of all real property.

The amount of the seventh item shall be deducted from the amount of the fourth item, and the balance, if any, assessed as

the cash value of the personal estate. The amount of the sixth item shall be deducted from the amount of the fifth item, and the balance, if any, assessed as personal. Manner of determining personality.

Vessel and Marine Property.—The president, secretary or principal owner of all navigation or transportation companies, and each and every owner of any vessel, steamboat, wharf boat, barge or water craft, shall make out and deliver to the assessor a sworn statement setting forth: Vessels, etc.

1. The name of the company; Company name.
2. The location of its principal office; Location.
3. The amount of capital stock paid in; Capital.
4. The cash value of such stock; Value of stock.
5. The name of each and every boat or vessel owned by such company or individual, with its insurance rate and value; Name and value of boats.
6. The value of all other personal property used and belonging therewith or thereto; Personal property.
7. The actual *bona fide* indebtedness upon every such boat or vessel separately; Indebtedness.
8. The value of all real property owned by such company or person, with the description of the same, if in his assessing district; Real estate.
9. The value of all franchises, slips or docks owned or used by such company or person. Franchises, docks, etc.

The actual value of all such property after deducting the amount of the seventh item shall be deemed the assessable value of such property. Assessable value.

In case of the refusal of the president, secretary, principal accounting officer or owner hereinbefore mentioned to make the statement or statements hereinbefore recited and required, the prosecuting attorney shall cause such person, on complaint of such assessing officer, to appear forthwith before a circuit court commissioner, who is hereby authorized to issue summons therefor and to order its service and to compel the attendance of said officer or person in obedience to such summons, and to examine them under oath, and make such investigation at the expense of such bank, corporation or person as may enable such commissioner and assessing officer to obtain the information provided for in this section. Examination of persons refusing to make statement.

For General Purposes.—Every owner of property liable to taxation under the provisions of this act, being of full age and sound mind, who is a resident of this State, shall make out and deliver to the supervisor or assessor on demand, a sworn statement of all the property owned or held by him, as follows: Sworn statement of property required.

REAL PROPERTY.

An accurate description of each parcel of land, with the number of acres contained therein. Realty.

PERSONAL PROPERTY—CREDITS.

Annuities royalties. Credits.

1. All annuities and royalties;

2. All credits of every kind owing to such person, whether such indebtedness is due from individuals or from corporations, public or private, and whether debtors reside within or without this State, including all deposits in banks or with other corporations or individuals; together with a statement of any part thereof that is secured by real estate mortgage on lands situated in some other state;

Indebtedness.

3. All *bona fide* indebtedness, owing by such person, giving an itemized statement in detail, how secured, and to whom owing, and the residence of such creditors and the amount due each, provided he desires to have the same deducted from his credits.

PERSONAL PROPERTY—CHATTELS.

Bank shares.

1. All shares in banks organized in this State under any law of this State or of the United States, and their cash value after deducting the value of the real estate taxed to banks;

Foreign stock.

2. All shares in foreign corporations, except national banks, and their cash value;

Shares in Michigan companies.

3. All shares in other corporations organized under the laws of this State when the property of such corporation is not exempt, or is not taxable to itself, and their cash value;

Moneys.

4. All moneys;

Jewelry.

5. The value of all gold and silver plate, watches, diamonds and jewelry;

Furniture.

6. The value of all household furniture, over and above exemptions;

Billiard tables, etc.

7. The number and value of all billiard tables and other personal property used in connection therewith, and all other similar property owned or in possession by him;

Patent rights.

8. All patent rights and their value;

Animals.

9. The number and kinds of domestic animals not exempt, and their value;

Carriages, etc.

10. All carriages and other vehicles, and sleighs kept for pleasure or hire, and their value;

Tools.

11. All mechanical and argicultural implements and tools, and their value;

Machinery.

12. All machinery not affixed to real property, and its value;

Boats.

13. All ships, boats and vessels, whether at home or abroad, and their value;

Merchandise.

14. All merchandise and stock in trade, including grain in elevators, and its value;

Logs, lumber, etc.

15. All logs, timber, lumber, posts and ties, and their value, where the same is situate on the second Monday in April, as near as may be, and the distinctive marks thereon, if any, and place of destination in this State;

Other property.

16. All other goods, chattels and personal property not heretofore specifically mentioned, and their value, except property specifically exempt from taxation;

17. All goods and chattels which are exempt from taxation; Exemptions.
18. All moneys or other personal property held as assignee, attorney, executor, guardian or agent, liable to taxation under the laws of this State; Property in trust.
19. The number of dogs of all kinds over six months old; Dogs.
20. The value of all elevators, warehouses and improvements on lands, the title to which is vested in any railroad corporation, and the value of the contents. Improvements on R. R. lands.

All the forms are delivered to assessors by the county treasurer. It is the duty of the assessor to furnish every person required to make such statement with a blank, and to either call for it or notify such person or company to present it to him at a specified time and place.

BANKERS AND BROKERS: Does not relate to incorporated banks, and the special rules for assessment of the property and stock of incorporated banks would not apply to the assessment of property listed under this section.

PAWNBROKERS: Personal property in pawn, being assessable to the pawnbroker, is not to be assessed to the owner.

PROPERTY OF COMPANIES: See notes to Secs. 5, 8, 11.

Section 19 relates exclusively to the statement made by persons, firms or corporations. This section, under the head of "property of companies" provides that any company or association incorporated or unincorporated, except railroads, insurance and telegraph companies and banking corporations, etc., shall make out and deliver to the assessor a sworn statement setting forth certain facts. The paragraph following Sub. 7 is a general rule authorized by the legislature for the purpose of ascertaining the personal property of a corporation for purposes of taxation where no other method is expressly provided for in the general tax law; but where in the general tax law the legislature has expressly provided how the property of certain corporations shall be assessed, then in that case the special provision governs. Sec. 19 is but a small part of the general tax law and in placing a construction upon it we must consider the whole act in so far as its several sections bear upon the particular point under consideration, and no literal construction can be resorted to that in any way violates the clear intent of the legislature. Whenever it conflicts with or contravenes any of the *express* provisions of said act in regard to the manner of making the assessment, the provision stating of what personal property shall consist and the exemptions provided for, then and to the extent of such contravention, it must give way to the more important and express provisions of the statute. For the purposes of taxation Sec. 8 expressly states what personal property shall include, and Sec. 9 as distinctly designates the personal property exemption. These sections apply to corporate property as well as to that of individuals. Under Sub. 6 of Sec. 8, and Sub. 5 of Sec. 9, indebtedness of either an individual, firm or a corporation *can only be deducted from credits.* If there are no credits shown in the statement of personal property there is nothing from which the debts can lawfully be deducted. When the personal property of a corporation has been ascertained by the assessing officer for purposes of taxation, pursuant to Sec. 19, or under the authority conferred upon him by Sec. 22, or both, he then assesses the personal property to the company or corporation as provided by Sec. 11, or according to the special provisions of the general tax law that may apply to the particular corporation assessed, and the real property is assessed as provided in Sec. 8.—Opinion of Attorney General Oren, March 28, 1900.

7124, 7142, 8508 and 8547 C. L. 97 providing for report as to stock, etc., of certain corporations are held by Attorney General to be superseded by this section.

VESSEL PROPERTY: See note to Sub. 4, Sec. 8.

GENERAL PURPOSES: PERSONAL PROPERTY—CREDITS—Sub. 3. It cannot be presumed that the assessor can have any personal knowledge of the amount of debts subject to deduction unless statement is furnished.—First National Bank of St. Joseph v. Township of St. Joseph, 46 M. 526.

SEC. 20. (3843) The supervisor or assessor shall not accept any of the statements herein above required as final or sufficient when such statement is not properly subscribed and sworn to, but shall preserve the same as in other cases, and such statement may be used in making the assessment and as evidence in any proceeding which may arise respecting the making of the assessment of the party furnishing such statement. Imperfect statements.

SEC. 21. (3844). Am. Act 154 of 1899. In every case Willful neglect.

when any person or member of any firm or officer of any corporation shall wilfully neglect or refuse to make out and deliver a true and correct sworn statement, under oath, administered by the supervisor or other assessing officer or members of the Board of State Tax Commissioners herein provided for or other officers or shall answer falsely or refuse to answer questions concerning his property or property under his control, as required by this act, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment in the discretion of the court.

Duty of assessor.

And it shall be the duty of the supervisor, assessing officer, and each member of the Board of State Tax Commissioners whenever he is satisfied that any person liable to make such assessing statement is justly liable to such penalty, to report the case to the prosecuting attorney of the county and make proper complaint for such prosecution.

Assessor may secure other testimony.

SEC. 22. (3845) Am. Act 154 of 1899. If the supervisor or assessing officer or a member of the Board of State Tax Commissioners shall be satisfied that any statement so made is incorrect, or if, by reason of absence or other cause, said sworn statement cannot be obtained from the person, firm or corporation whose property is so assessed, said supervisor, assessing officer or any member of the Board of State Tax Commissioners is hereby authorized and required to examine, on oath, to be administered by any of them any other person or persons whom he may have good reason to believe, and does believe has knowledge of the amount or value of any property owned, held or controlled by such person so neglecting or refusing or omitting to be examined or to furnish such statement, and such supervisor or assessing officer is hereby authorized to set down and assess to such person, firm or corporation so entitled to be assessed, such amount of real and personal property as he may deem reasonable and just.

Statement to be presented to board of review.

SEC. 23. (3846) All the statements herein required to be made and received by the supervisor or assessor shall be filed by him, and shall be presented to the board of review hereinafter provided for, or provided for in any act incorporating any town, village or city, for the use of said board, and after the assessment is reviewed and completed by such board of review,

Final disposition of statements.

all of the statements shall be deposited in the office of the township or city clerk, as the case may be, and shall be preserved until after the next assessment is made and completed, after which they may be destroyed upon the order of the township board or city or village council, but no such statement shall be used for any other purpose except the making of an assessment for taxes as herein provided, or for enforcing the

Unlawful use of statement.

provisions of this act, and any officer or person who shall make or allow to be made, wilfully or knowingly, any other or unlawful use of any such statement, shall be liable to the person

making such statement for all damages resulting from such unauthorized or unlawful use of such statement.

Where township clerk to keep records.—2338 C. L. '97. Supervisors shall keep all records and papers belonging to his office in a safe and suitable place, but not in any saloon, restaurant, public inn, hotel, place of public amusement, nor in any place where intoxicating liquors are kept or sold, or where gaming or plays of chance of any kind are carried on, or where they will be exposed to an unusual hazard from fire or theft.—2333 C. L. '97.

OF THE ASSESSMENT ROLL.

Assessment roll.

SEC. 24. (3847) Am. Act 262 of 1899. On or before the third Monday of May in each year, the supervisor or assessor shall make and complete an assessment roll, upon which he shall set down the name of every person liable to be taxed in his township or assessment district, with a full description of all the real property therein liable to be taxed. If the name of the owner or occupant of any such tract or parcel of real property is known, he shall enter the name of such owner or occupant, as in this act provided, opposite to the description thereof; in all other cases the real property described upon such roll shall be assessed as "owner unknown." All contiguous subdivisions of any section that are of equal value and are owned and occupied by one person, firm or corporation, and all unimproved lots in any block that are of equal value and are contiguous and owned and occupied by one person, firm or corporation shall be assessed as one parcel, unless demand in writing is made by the owner or occupant to have each subdivision of the section or each lot assessed separately; but failure to assess such contiguous parcels as entireties as herein provided shall not invalidate the assessment as made. Each description shall show as near as may be the number of acres contained in it, as determined by the supervisor. It shall not be necessary for the assessment roll to specify the quantity of land comprised in any town, city or village lot. The supervisor shall estimate, according to his best information and judgment, the true cash value of every parcel of real property and set the same down opposite such parcel. He shall also estimate the true cash value of all the personal property of each person, and set the same down opposite the name of such person. In determining the property to be assessed and in estimating such value, he shall not be bound to follow the statements of any person, but shall exercise his best judgment. Property assessed to one other than the owner shall be assessed separate from his property and shall show in what capacity it is assessed to him, whether as agent, guardian or otherwise. Two or more persons not being co-partners, owning personal property in common, may each be assessed severally for his portion thereof. Undivided interests in lands owned by tenants in common, or joint tenants not being co-partners, may be assessed to the owners thereof.

How made.

Contiguous lands.

Acreage.

Valuation.

Property assessed to agent, etc.

Partnership property.

Tenants in common, etc.

ASSESSMENT ROLL: The listing of property is clerical, but the ascertaining and determining its value is judicial, requiring the judgment of the supervisor, under his oath of office, and cannot be dispensed with in mak-

ing a valid assessment roll.—Woodman v. Auditor General, 52 M. 28. Supervisors cannot authorize another to copy the roll of a previous year in so far as real estate is concerned and attach and sign the statutory certificate, as the law requires the exercise of the supervisor's best judgment.—Paldi v. Paldi, 84 M. 346. The clerical work of making a roll may be done by any person acting under the direction of the supervisor or assessor; but the determination of what property shall be listed thereon must be the personal act of the assessor and must be performed after the exercise of due diligence by him in ascertaining the taxable property in his assessing district and the ownership and value thereof. The law leaves to the assessor no discretion as to the omission of property from the rolls. None is exempt except such as is especially exempted by the law, and all property not distinctly excepted must be assessed at its true cash value. Nor can the assessor right what he believes to be a wrong done the tax-payer by some previous assessment, by omitting or under-valuing his property.—Assessor's Manual, 50. Failure to list property in accordance with law is a wrong to all persons assessed, to the extent which it makes property assessed to them a larger proportion of the aggregate taxable property than it should have been; and in such case the levy would be jeopardized.—Moss v. Cummings, 44 M. 359.

Where by agreement between the supervisor and the board of review property was intentionally omitted from the assessment roll, an individual taxpayer is entitled to relief from the excessive amount of his tax.—Solomon v. Township of Oscoda, 77 M. 365. Where assessing officers have purposely in violation of law exempted property from taxation so the burden of taxation rests unequally, those who are wronged by this action (and all, except those whose property was insufficiently assessed, were wronged) are entitled to remedy against such wrong; certainly to such reduction of taxes as will make the burden no more than if favored property had been properly assessed. A willful or intentional violation of law by omission of property from assessment, or by its deliberate under-valuation, will not be treated in equity as an accidental omission or an honest mistake in judgment.—Walsh v. King, 74 M. 370.

NAME: Assignee vested with estate.—9670 C. L. '97. As to payment of debts by assignee (taxes included) see 9674 C. L. '97. Assessment in the name of other than the owner imputing ownership to the person so named, if made by the assessing officer knowingly for the purpose of defrauding or imposing an unjust tax on such person, might be assumed to be to his prejudice in the absence of a contrary showing.—Bradley v. Bouchard, 85 M. 18. A supervisor is not bound to take the statement of any person as to the ownership of land nor as to the person to whom it should be assessed, but may exercise his best judgment in determining these questions.—Meade v. Haines, 81 M. 261.

DESCRIPTION: See Sec. 25. As to assessment of large and remote areas of wild land, see Sawyer-Goodman Co. v. Crystal Falls, 56 M. 597.

VALUATION: See Sec. 116. There is a manifest tendency in many assessment districts to put upon the property of non-residents an undue proportion of the burden of taxation. By doing this the assessor very frequently lays the foundation for a contest which is sure to result either in the property assessed escaping taxation entirely, or in an expense attending the enforcement of payment which is equal to or in excess of the tax levied. By the ordinance of 1836 it was provided that "in no case shall non-resident proprietors be taxed higher than residents" (p. 66 C. L. '97). The enactment of this provision was one of the conditions upon which Michigan gained statehood. It has never been repealed, and never can be. More than this, it is a righteous enactment and the endeavor to evade its provision has cost the State dearly. It has also done serious injury to many localities by causing the withdrawal of investments and retarding development.—Assessor's Manual 10.

Assessing officers must inform themselves as far as possible of the true cash value of each parcel and must not assess non-residents differently from others.—Sawyer-Goodman Co. v. Township of Crystal Falls, 56 M. 597.

All assessments shall be on property at its cash value.—Sec. 12, Art. XIV. Constitution. This does not apply to a tax on business or occupation.—Walcott v. People, 17 M. 68; Kitson v. Mayor, 26 M. 325; nor to assessments for local improvements.—Woodbridge v. Detroit, 8 M. 274; Motz v. Detroit, 18 M. 495. This constitutional provision is as much designed to prevent over-valuation as under-valuation.—Avery v. East Saginaw, 44 M. 587.

Assessment on a false valuation is a public wrong, and ought to be redressed in a public prosecution.—Moss v. Cummings, 44 M. 359. If the supervisor of a township in making the assessment of property for taxation shall fraudulently and with the view to impose upon an individual more than his just proportion of the public burden of taxation, assess the property of such individual above its value and relatively above the other assessments on his roll, the party aggrieved may have an injunction to restrain the collection of the excessive tax.—Merrill v. Auditor General, 24 M. 170. Intentional underassessment of a certain class of property is invalid whether it be by agreement or in disregard of official duty.—Auditor General v. Jenkinson, 90 M. 522.

Where assessing officers and board of review omit personal property under value and omit certain real estate intentionally, the object and purpose being to throw a larger taxation upon certain classes of property and to aid and benefit the working properties and the residence properties, thus discriminating and not placing the assessment upon the question of valuation at all, but attempting to carry out a scheme, the entire assessment is void as to all persons who present objections.—Auditor General v. Pendill, 6 Det. Leg. News 1098.

The intentional omission from the tax roll of a township of $80,000 of personal property taxable therein, and the assessment of the real estate of the township at one-fourth its cash value invalidates State and county taxes levied upon lands in other townships which were assessed at cash value when the equitable amount due from a county tax cannot be ascertained.—Auditor General v. Prescott, 94 M. 190.

It is indispensable to the validity of an assessment that it should clearly show the valuation of, and the amount of taxes charged against each parcel of land.—Black on Tax Titles, 117. The value of property is to be estimated with reference to the advantages or profits that can, or may be derived from it.—Black on Tax Titles, 95.

Petitions for the reductions of valuations of townships cannot be regarded by the supervisors in the assessment of taxes.—Attorney General v. Sanilac Supervisors, 42 M. 72.

"While, in relation to most of the duties of assessors, they involve so much of judgment and discretion, and partake so much of the nature and character of judicial proceedings, that their judgment, exercised in good faith and without malice, is conclusive in their favor, yet in relation to setting real estate in the list to the owners or the persons liable to pay taxes thereon, so far as relates to the persons to whom the land is to be set and the number of acres, the assessors are bound to act in good faith, and with common care, skill and prudence, and if they so act they are not liable for mistakes or inaccuracies, but if not, they are liable to the party injured for the consequences of such mistakes, oversights or inaccuracies."—Black on Tax Titles, 122. "A discretionary power cannot excuse an officer for refusing to exercise his discretion. His judgment is appealed to, not his resentment, his cupidity or his malice. He is the instrument of the law to accomplish a particular end through specified means; and when he purposely steps aside from his duty to inflict a wanton injury, the confidence reposed in him has not disarmed the law of the means of prevention. His judgment may indeed be final if he shall exercise it, but an arbitrary and capricious exertion of official authority, being without law, and done to defeat the purpose of the law, must, like all other wrongs, be subject to the law's correction."—Merrill v. Auditor General, 24 M. 170. But the assessor is both morally and legally bound to seek the fullest light upon his duties. "He who ignorantly does an injury shall knowingly make reparation."—Miller v. Aldrich, 31 M. 408. A public officer is liable to private individuals for injuries resulting to the latter from his failure to perform ministerial duties in which the latter have a special and direct interest. He is also liable for a failure to perform duties of a judicial nature, if he neglects them maliciously.—Raynesford v. Phelps, 43 M. 342. A supervisor, when acting as assessor, is a quasi judicial officer, and in the exercise of his judicial duties he cannot be held liable in a suit at law for errors he may have made.—Meade v. Haines, 81 M. 261. When the assessor acts in good faith and intelligently exercises his best judgment, the law protects him. An individual has no right of action against an assessor to impeach his assessment, except on the ground of fraud or malice.—Moss v. Cummings, 44 M. 360. But he cannot ignore common sense and ordinary experience in discharging his duties.—Medina v. Perkins, 48 M. 67. The assessor is not required to perform impossibilities.—Peninsula Iron Co. v. Crystal Falls, 60 M. 510. But he must use due diligence.

See Secs. 14, 99, 130.

SEC. 25. (3848) The description of real property may be as follows, viz.: **Description of realty.**

1. If the land to be assessed be an entire section, it may be described by the number of the section, township and range; **Sectional descriptions.**

2. If the tract be the subdivision of a section authorized by the United States for the sale of public lands, it may be described by the designation of such subdivision, with the number of the section, township and range; **Subdivisions.**

3. If the tract be less or other than such subdivision, it may be described as a distinct part of such subdivision, or by designation of the lot or other lands by which it is bounded, or in some way by which it may distinctly be known; **Irregular parcels.**

4. In case of land platted or laid out as a town, city or village, or as an addition to a town, city or village, the same may be described by reference to such plat and by the number of the lots and blocks thereof, whether such plat be recorded or not; **Land platted.**

5. When two or more parcels of land adjoin and are used and occupied together, they may be assessed by one valuation; **Adjoining lands.**

Described as known.

6. Lands may be designated by any description by which they may be known;

Abbreviations.

7. It shall be sufficient to describe the real property assessed upon any roll and in all other proceedings under this act, in the manner heretofore in use by initials, letters, abbreviations and figures.

SUB. 1. "Township" means surveyed township.—Manistee Lumber Co. v. Township of Springfield, 92 M. 277.

SUB. 2. "East ½" or "West ½" as used in government surveys have no reference to quantity, but fixes the dividing line equi-distant between boundaries.—Jones v. Pashby, 62 M. 614. So a "½" containing more or less than a natural acreage (such as usually occur on the north and west boundaries of townships) should be described as "fractional ½." In entering subdivisions of a section or subdivisions of a quarter-section commence at the N. E. ¼, then the N. W. ¼, then the S. W. ¼, ending with S. E. ¼.

SUB. 3. Land described on government plats by number is not properly designated otherwise.—King v. Potter, 18 M. 134. Land described as bounded on designated side by a given county drain sufficiently described.—Husted v. Willoughby, 117 M. 56. Provision for description "by designation of the lands by which it is bounded" has reference to cases in which the tract is not known by name or number and in which such a description would be the most likely to attract attention of the person interested in the payment of the tax.—Gilman v. Riopelle, 18 M. 145. See also Amberg v. Rogers, 9 M. 332. A description of a part of given tracts must clearly define the specific and determinate parts intended. Such a description as "E. part of S. E. ¼ of N. W. ¼, etc. 10 acres" should never be used unless the 10 acres intended is the E. 10 acres having a regular west boundary, i. e., bounded by a line running due north and south. If the west boundary be irregular (as by a road or stream) it should be described, say as "that part of the S. E. ¼ of the N. W. ¼, etc., lying east of (here give the west boundary), 10 acres."

SUB. 4. Lots and blocks defined.—Anderson v. Baughman, 7 M. 76. Title of recorded plats must be fully given as in register's records.—Burrowes v. Gibson, 42 M. 121; Jackson v. Sloman, 117 M. 126. See note Sub. 7. In making the assessment roll care should be taken to place each description under its proper heading. City or village property must be placed under its proper heading, particular attention being paid to the several subdivisions, each of which should be distinctly described. In townships the section number should be written opposite each description, and not omitted or indicated by ditto marks.

Lands situated in "Hoyt's plat of East Saginaw" held to be sufficiently described as in "Hoyt's plat, City of Saginaw," the two cities being consolidated.—Wilkin v. Keith, 6 Det. Leg. News 305.

Plats.—3372-89, C. L. '97.

SUB. 5. A dwelling house with the land and appurtenances occupied with it, a warehouse so occupied, a farm or other parcel of real estate let to the same tenant by one and the same lease, parcels detached from each other and used and occupied for different purposes, may respectively be regarded as separate and distinct estates, to be distinctly valued and assessed.—Shaw C. J., in Hayden v. Foster, 13 Pick. 432, 497. In the case of adjacent unimproved lands, assessment as one parcel of such land as was purchased by the owner as one parcel (if the entire be within the assessing district) is sufficient, though by the government survey it was divided. While lands may lawfully be divided into the lowest legal subdivisions, this should be avoided where contiguous lands are known to belong to one owner. Separate and distinct parcels must be assessed and valued separately, and omission to do so is not a mere irregularity. But parcels in two sections should not be assessed together, even though contiguous and owned and occupied by the same person.

See Sec. 24.

SUB. 6. Descriptions do not identify of themselves but only furnish the means of identification.—Willey v. Snyder, 34 M. 60. Falsity in description affects all subsequent proceedings. A tax sale of property that is misdescribed in the assessment roll will be wholly invalid.—Black on Tax Titles, 112. Descriptions must be so definite and certain as not to require extrinsic proof. The requirements as to description in tax proceedings are not only aimed at securing an identification of the property that will be certain but are designed to afford notice to the owner, and therefore should be such as not to mislead by departure from strict accuracy.—Jackson v. Sloman, 117 M. 126.

Where acreage property is described the acreage must be correctly given. Exceptions noted in the description must be clearly defined. Failure to do this is the occasion of much trouble in tax records. If there is exempt property within the area described—for instance, if a railroad crosses the land, or a schoolhouse site is located thereon, the exception must be distinctly designated and the acreage assessed correctly stated.

Properties which are crossed by railroads should not be assessed as one parcel without any reference to the railroad. There should be excepted from these assessments the right of way of the railroad company. It would be safer to assess that portion of the forty lying east or west of north or south of the railroad, as the case may be, separately, treating them as separate

parcels of land, there being another owner or occupant coming in between. At all events they should except the right of way of the railroad company. That the railroad company is an occupant of this land there can be no question and therefore land thus severed should not be assessed as one parcel. It is certainly safer to treat land thus crossed as different parcels.—Opinion of Hon. John W. Stone, Circuit Judge 25th Judicial District; quoted in Auditor General v. Pendill, 6 Det. Leg. News, 1098.

"Thence running to the rear of the said" land does not necessarily mean that parcel is bounded by the rear line of the land referred to, but may simply indicate the direction of the boundary; as if the word "toward" were used instead of "to," and is therefore indefinite.—Moran v. Lezotte, 84 M. 83.

"Any description by which they may be known" should be understood to mean description by which any person may know the land. The owner may be, in the common acceptance of the term, a stranger to the land, and the description must be given with sufficient particularity to afford means of identification. One of the worst forms of description in common use is that in which a piece of land is described as "bounded north by Savage, east by Davis, south by Shier and west by Schaufele." There are hundreds of such descriptions on the records of delinquent tax lands, the same land being held for various years, but described as bounded by the lands of different persons as changes of ownership have occurred, and it is impossible to bring the several years together in the absence of the records which show changes of ownership. While doubtless many of these descriptions are not fatally defective, they are the occasion of much trouble and uncertainty and should be avoided as far as possible. A much better description would be to start from a point so described as to be geographically located with certainty and from there to go from point to point by natural stages until the starting point is again reached.—Assessor's Manual, 55. Description of building is no description of the lot.—Lefevre v. Mayor, 2 M. 586. Description must be sufficient to fit and comprehend the property.—Eggleston v. Wagnoer, 46 M. 618. Land described "less lots sold" cannot be held bound.—Hubbard v. Winsor, 15 M. 146. But where a misdescription of lands in an assessment roll was caused by following a list furnished by the parties themselves, they were not allowed to claim it as a ground of equitable relief and were remitted to their legal remedies.—Ibid. Further as to description, see Mann v. Carson, 6 Det. Leg. News 288.

SUB. 7. A deed is not invalid because of the description of the land being in figures and well understood abbreviations. But abbreviations, if used, must be such as are in common use.—Harrington v. Fish, 10 M. 415; Sibley v. Smith, 2 M. 486. Abbreviations unusual in land descriptions (as "q" or "qr" for "¼") must be avoided. As to fractional description see Donahue v. Klassner, 22 M. 255; AuGres Boom Co. v. Whitney, 26 M. 42; Dart v. Barbour, 22 M. 271. Further as to abbreviations in roll see Auditor General v. Sparrow, 116 M. 574.

See Sec. 99.

Personal property.

SEC. 26. (3849) The description of personal property on said roll may be made by using the word "personal," except in cases heretofore mentioned, or in the assessing of any dog tax authorized by law, in which case the kind of property assessed shall be properly designated upon the roll.

Enumeration of personal property is surplusage and does not affect the validity of the assessment.—Comstock v. Grand Rapids, 54 M. 641.
Provision as to dog tax is superseded by Act 222 of 1899.

"Cash value" defined.

SEC. 27. (3850) The words "cash value," whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale. In determining the value the assessor shall also consider the advantages and disadvantages of location, quality of soil, quantity and value of standing timber, water power and privileges, mines, minerals, quarries or other valuable deposits known to be available therein and their value.

Location and appurtenances.

The constitutional provision requiring assessments to be made on property at its cash value means not only what may be put to valuable uses, but what has a recognized pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it.—Perry v. Big Rapids, 67 M. 146. Assessments upon anything but the true cash value of property are illegal and in violation of the assessor's official oath.—Wattles v. Lapeer, 40 M. 624.

In determining the true cash value of land the value of standing timber should be included.—Fletcher v. Township of Alcona, 72 M. 18. The rule should be applied universally. If another than one holding title to the land or possession thereof claims an interest in standing timber or other products or deposits on the land, the owner or person in possession must secure relief from the burden of taxation through mutual agreement between himself and the owner of such products or deposits; the assessor cannot consider such claims.—Assessor's Manual, 56.

See Secs. 2, 74.

OF THE BOARD OF REVIEW.

Board of review.

Election of.

Supervisor to be member.

Vacancies.

Quorum, etc.

SEC. 28. (3851) At the annual township meeting held on the first Monday of April in the year eighteen hundred and ninety-four, there shall be elected by ballot, on the regular township ticket, two suitable electors of the township to serve as members of the board of review, one of whom shall be elected for one year, and one for two years, and annually thereafter one member shall be elected for two years, who shall take the constitutional oath of office as other township officers. The supervisor and the two electors so elected shall constitute a board of review for such township. The township board may temporarily fill any vacancy which shall occur in the membership of said board of review, but no member of such township board shall be eligible to fill such vacancy. A majority of said board of review shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day, and a majority vote of those present shall decide all questions.

For board of review in cities see Sec. 107.

Time of meeting.

Supervisor to submit roll.

Board to correct and perfect roll.

SEC. 29. (3852) On the Tuesday next following the third Monday in May, the board of review of each township shall meet at the office of the supervisor; at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him, and the said board shall proceed to examine and review the same, and during that day, and the day following if necessary, said board of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by it, in a separate column. The roll as prepared by the supervisor shall stand as approved and adopted as the act of the board of review, except as changed by a vote as herein provided. If for any cause a quorum does not assemble during the days above mentioned, the roll as prepared by the supervisor shall stand as if approved by the board of review.

Supervisor's roll to stand as approved.

Exceptions.

Board action must be joint, not individual.—Cooley on Taxation, 257. Boards are as closely limited to the exercise of the authority definitely given them by statutes as are individual officers. The board of review must act strictly within the authority given them by the tax law.—They derive no authority

from any other source and have none to make any changes in the assessment roll not specifically given them by said act. For instance, they have no authority to set aside an assessment upon the ground of want of power in the municipality levying it.—Assessor's Manual, 58.

No legal agreement can be made with the board of review by which the whole or any part of a township shall be assessed at a uniform value.—Auditor General v. Ayer, 6 Det. Leg. News 688.

Whether an assessment is excessive is a question for the board of review and not for the courts.—Caledonia v. Rose, 94 M. 216. One is not bound to notice or appeal from an assessment of personal taxes against him if jurisdiction to assess them does not exist.—Williams v. Saginaw, 51 M. 120. When a person is over-taxed for some property and under-taxed for other property on the same roll for an equal or greater amount he is not entitled to abatement. He can claim relief only if the assessment is injurious to him.—Assessor's Manual, 58.

The board of review are not required to base their conclusions upon sworn testimony only. They may act upon their own personal examination or upon any evidence satisfactory to them.—Griswold v. School District, 24 M. 262. In Dryer v. Board of Review, Mich. Mand. Cases 1283, mandamus issued to compel respondents to place upon the assessment roll so much of certain real estate belonging to incorporated body whose property used for the purposes of its incorporation was exempt, as was not so used but rented for mercantile business.

The provision requiring the board of review to meet upon specified days for review, etc., is mandatory.—Caledonia v. Rose, 94 M. 216. See also Secs. 99, 130, 159. For time of meeting see also Secs. 30 and 32.

Second meeting.

SEC. 30. (3853) Said board of review shall also meet at the office of the supervisor on the fourth Monday in May at nine o'clock in the forenoon ,and continue in session during the day and the day following. Such board shall continue its sessions at least six hours each day, and at the request of any person whose property is assessed thereon or of his agent, and on sufficient cause being shown, shall correct the assessment as to such property, in such manner as in their judgment will make the valuation thereof relatively just and equal. To that end said board may examine on oath the person making such application, or any other person, touching the matter. Any member of said board may administer such oath. After said board shall complete the review of said roll, a majority of said board shall endorse thereon and sign a statement to the effect that the same is the assessment roll of said township for the year in which it has been prepared and approved by the board of review. Said statement may be in the following form, viz.:

Corrections on request.

Evidence under oath.

Endorsement of roll.

"Assessment roll of the township of....., for the year 18... as approved by the board of review.

Form.

"Dated..... .....

.....

.....

.....

"Board of Review."

A tax-payer has the right to assume that the board of review will remain in session the full statutory time and to arrange to be present at his pleasure within that time; and if he is prevented by failure of the board to perform this duty, the tax levied against him is void.—Caledonia v. Rose, 94 M. 216. Provision that board shall "continue in session during the day and day following" is mandatory; and where property owner is deprived of a hearing by the illegal adjournment of the board the first day, there is no jurisdiction to levy taxes on his property.—Auditor General v. Chandler, 108 M. 569. Where owner appeared at place of meeting of board of review on fourth Monday in May but failed to attend session on following day, he cannot be heard to complain on ground that he was deprived of his day in court. Tax is not rendered void because of failure of board to convene on first day.—Wright v. Auditor General, 118 M. 556. Final action by the board of review cannot be had after the expiration of the time the statute allows the board to be in session.

The tax-payer must be allowed, before the assessment roll is completed, the opportunity of seeing what assessments have been made against his property, and the privilege of showing that the proposed assessment is for any cause illegal or unjust.—Woodman v. Auditor General, 52 M. 28. Tax-payers

cannot lawfully be deprived of rights to hearing by board of review.—Common Council v. Smith, 99 M. 507. Any person may have redress against unjust or unequal valuation of property on the roll to his injury, whether by over-valuation of his own property or an under-valuation of that of others. Parties whose property is to be taken by summary tax proceedings are entitled as of right to be heard at some stage of the proceedings before the tax becomes an established charge against them or their property.—Thomas v. Gain, 35 M. 155.

When the board of review has reduced an assessment, its action is final and cannot be changed, if at all, without giving the party a further hearing. The new increase is an excess of jurisdiction and no valid action can rest on it, against the party so injured.—Phillips v. Township New Buffalo, 64 M. 683. Where board of review changes valuations after its authority to do so has expired, the entire tax will be rendered invalid. Omission of valuation in roll by supervisor will not render tax invalid where board of review seasonably supplied the defect. But a change of valuations by the board of review upon its own motion after the expiration of the time allowed for that purpose invalidates the entire tax; and the addition of land to a roll by the board after the expiration of such period invalidates the tax as to the lands so added.—Auditor General v. Sparrow, 116 M. 574.

Each case is heard by itself, and when disposed of the party is no longer under obligations to watch proceedings of the board.—Griswold v. School District, 24 M. 262. The board cannot refuse to consider the claim of a taxpayer if presented in writing or by an agent or attorney, because he does not appear in person and submit to an examination; but if it has good reason for so doing, it may declare the proof adduced insufficient.

A tax-payer must avail himself of his right to appeal to the board of review or he will have no standing in court when seeking there for abatement of tax or redress of a wrong done him by the assessment, except when he can show fraud or bad faith on the part of the assessor.—Peninsula Iron Co. v. Crystal Falls, 60 M. 510; Meade v. Haines, 81 M. 261; Brown v. Grand Rapids, 83 M. 101; Smith v. Carlow, 114 M. 67. If a tax-payer does not have his assessment corrected and perfected when it is in his power to do so, his failure must be assumed to admit its correctness.—First National Bank of St. Joseph v. Township of St. Joseph, 46 M. 526; Detroit River Savings Bank v. Detroit, 114 M. 81. Boards of review are the proper tribunals for the correction of unjust assessment, and parties will not be heard in the courts until they have exhausted their remedy before these tribunals.—Michigan Savings Bank v. City of Detroit, 107 M. 246.

One cannot complain that the assessment was in name of wrong person, or of any other irregularities which board of review might have corrected had application been made to it.—Hinds v. Township of Belvidere, 107 M. 664; Auditor General v. Keweenaw Asso., 107 M. 405. Where property owner rightfully assessed examines assessment at time of meeting of board of review and expresses himself satisfied therewith, one who succeeds to his rights and obligations in the premises cannot complain that the assessment is too high or was not properly reviewed.—Hamilton v. Ames, 74 M. 298.

Mandamus will not be granted to compel the assessment of taxable property which has been omitted from the roll, at a time when the owner will be deprived of right of a review of the assessment.—Maurer v. Cliff, 94 M. 194.

The presumption that all necessary papers were made and filed is overcome by the production of the assessment rolls with an unsigned certificate attached, and the showing is fatal.—Dickison v. Reynolds, 48 M. 159. No presumption that roll contains certificate, where roll introduced lacks certain leaves and the certificate.—Newkirk v. Fisher, 72 M. 113. The necessity for the several sheets of the assessment rolls being properly attached to each other, by sewing or binding, is evident.

Certificate signed by majority of the board is sufficient.—Mills v. Township of Richland, 72 M. 100. The proper certificate duly signed and pasted to the roll is compliance with the statute.—Darmstaetter v. Maloney, 45 M. 621. That certificate is dated on last review day does not necessarily show that it was premature.—Yelverton v. Steele, 36 M. 62. As to date of certificate see Dickison v. Reynolds, 48 M. 159.

Statutory certificate of taxing officers cannot be contradicted in collateral proceedings—Tompkins v. Johnson, 75 M. 181.

See Sec. 99.

Completed roll valid.

SEC. 31. (3854) Upon the completion of said roll and its indorsement in manner aforesaid, the same shall be conclusively presumed by all courts and tribunals to be valid, and shall not be set aside except for causes hereinafter mentioned. The omission of such indorsement shall not affect the validity of such roll.

Certiorari will not lie to bring tax proceedings before the supreme court for review.—Whitbeck v. Hudson, 50 M. 86; Hudson Common Council v. Whitney, 53 M. 158; Burnett v. Drain Commissioner, 56 M. 314.

Certificate of equalization does not form a part of assessment roll.—Tweed v. Metcalf, 4 M. 579. But must be written or printed on or affixed thereto.—Sec. 34.

The too frequent practice of indicating changes made by the board of review by mere note made of the new valuation, or of the correction of an erroneous description cannot be too strongly deprecated. Such correction is in no proper sense a "completion" of the roll. The law does not in express terms provide that the board endorse their amendment of the roll in ink, nor that they foot it and place the total amount at the foot of the several columns; but anything less than this lacks much of "completion," nor should the concluding sentence of this section be made the excuse for failure to indorse the roll, as provided in Sec. 30.

Absent members.

SEC. 32. (3855) If from any cause a quorum shall not be present at any meeting of the board of review, it shall be the duty of the supervisor, or, in his absence, any other member of the board present, to notify each absent member to attend at once, and it shall be the duty of the member so notified to attend without delay. If from any cause the second meeting of such board of review herein provided for is not held at the time fixed therefor, then and in that case it shall meet on the next Monday thereafter, and proceed in the same manner and with like powers as if such meeting had been held as hereinbefore provided.

Second meeting.

Records of board.

SEC. 33. (3856) The supervisor or clerk of said board of review shall keep a record of the proceedings of the board and of all the changes made in such assessment roll, and shall file the same with the township or city clerk with the statements made by persons assessed.

EQUALIZATION BY COUNTIES.

Equalization by supervisors.

SEC. 34. (3857) The board of supervisors in each county shall, at their session in October in each year, examine the assessment rolls of the several townships, wards, or cities, and ascertain whether the relative valuation of the real property in the respective townships, wards, or cities, has been equally and uniformly estimated. If, on such examination, they shall deem such valuation to be relatively unequal, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward, or city, or townships, wards, or cities, such an amount as in their judgment will produce relatively an equal and uniform valuation of the real property in the county, and the amount added to or deducted from the valuation in any township, ward, or city, shall be entered upon the records. They shall also cause to be entered upon their records the aggregate valuation of the taxable real and personal property of each township, ward, or city in their county as determined by them. The board shall also make such alterations in the description of any lands upon such rolls as may be necessary to render such description conformable to the requirements of this act. After such rolls shall have been equalized, each shall be certified to by the chairman and clerk of the board and be delivered to the supervisor of the proper township, ward, or city, who shall file and keep the same in his office.

Aggregate valuation.

Correction of descriptions.

Certification.

To whom delivered.

Failure to comply with the statutory requirement of equalization by the board of supervisors invalidates the tax. Informal action which is not recorded will not answer the requirements.—Yelverton v. Steele, 36 M. 62. The power of equalization by board of supervisors being confined to the real

estate and the whole subject being under their complete jurisdiction, they may adopt their own means of reaching the result. When any alteration is made in the aggregate valuation of the real estate, the additions or deductions so made may be expressed in any form which may by calculation be reduced to a percentage."Determining the aggregate" involves the necessity of footing the personal estate as valued by the supervisors and the real estate at the amount determined by equalization.—Case v. Dean, 16 M. 12. See also Williams v. Mears, 61 M. 86. If no changes are required it is only necessary to enter upon the record the aggregate valuation of real and personal property of each township, as determined by the board.—Chamberlain v. St. Ignace, 92 M. 332; Hoffman v. Lynburn, 104 M. 494. The statute contemplates that additions or deductions in equalizing will be added to or deducted from the aggregate valuation of all taxable property in the township.—Boyce v. Sebring, 66 M. 210.

It is competent for the board to reduce the aggregate of the assessments below that of the assessors'.—Tweed v. Metcalf, 4 M. 579. The board of equalization has no authority over individual assessments. The provision relative to making descriptions conformable to the requirements of the law is one of vital importance and should have careful attention.

A record of equalization must show the assessed valuation of the several townships and the amount added to or deducted therefrom, else is fatally defective and voids the entire levy for the year.—Auditor General v. Roberts, and Auditor General v. Reynolds, 83 M. 471; Chamberlain v. St. Ignace, 92 M. 332. A record of equalization which shows only "real estate assessed," "real estate equalized," "total estate assessed," "total estate equalized," is too uncertain to have any value as a public record.—Paldi v. Paldi, 84 M. 346. The certificate of equalization must be entered upon the several assessment rolls and signed after such entry. In Westbrook v. Miller, 64 M. 129, the tax sale and deeds were held void where the chairman of the board of supervisors signed blank certificates of equalization and left them to the county clerk to fill and forward to supervisors.

The failure of the chairman of the board of supervisors to sign the record of equalization and apportionment of State tax is fatal to the validity of the tax deed.—Weston v. Monroe, 84 M. 341. The evidence of two witnesses who testify positively that proceedings for equalization, etc., were not signed by chairmen of boards during their respective terms of office, carries more weight of evidence than that of the two chairmen, who did not remember when they signed, but were confident it was not after their term had expired, notwithstanding the presumption as to official acts.—Auditor General v. Hill, 97 M. 80.

The power to equalize is exclusive in the board of supervisors.—Attorney General v. Sanilac Supervisors, 42 M. 72. The action of the board of supervisors in equalizing the assessment cannot be reviewed by the courts. Fraudulent disregard of their duties may warrant resort to the criminal law or to other remedy; but the correctness of their review cannot be considered by any body. The question of valuation rests with the judgment of the board.—McDonald v. Escanaba, 62 M. 555.

The assessment roll is a public record to be retained by the supervisor intact and to be turned over to his successor with the other records and official properties of his office. In the case of Albany & Boston Mining Co. v. Auditor General, 37 M. 391, the supervisor took the assessment roll of 1873 which was in his office, and with a blue pencil made such changes and alterations thereon in valuation and otherwise as he deemed necessary and thus made the roll for 1874. The court says: "It was highly improper, if not criminal, for the supervisor to make any changes, alterations or additions in or to the original assessment roll of 1873, required by law to be kept in his office."

The certificate of equalization properly signed and affixed to the assessment rolls is a prerequisite to the making of a valid tax roll.—Maxwell v. Paine, 53 M. 30. Supervisors have absolute and exclusive right to the possession of the rolls and are authorized to bring suit in their official characters to recover possession of them.—Phenix v. Clark, 2 M. 327.

A meeting of the board of supervisors for the year 1891 shall be held on the fourth Monday of June, and on the fourth Monday of June every fifth year thereafter; and when convened the board shall proceed to equalize the assessment rolls; and each of said supervisors shall add up the columns of their respective rolls, enumerating the number of acres of land and the value of the real estate and personal property assessed, so as to show the aggregate of each.—134 C. L. '97. Where equalization was made at June session (preceding meeting of State Board of Equalization) failure to equalize at October session (in the same year) is not fatal.—Silsbee v. Stockle, 44 M. 561; Boyce v. Sebring, 66 M. 210.

See Sec. 35, 99.

OF TAXES, HOW AND BY WHOM CERTIFIED.

State taxes.

SEC. 35. (3858) On or before the first day of September in each year the Auditor General shall make and record in his office a statement showing the taxes to be raised for State purposes that year, referring to the law on which each tax is based,

and the total amount of such taxes. The State tax he shall apportion among the several counties in proportion to the valuation of the taxable property therein as determined by the last preceding State board of equalization, and shall before the October session of the board of supervisors in each year make out and transmit to the clerk of each county a statement of the amount of such taxes so apportioned to such county. He shall also, in a separate item of said statement, set forth the amount of indebtedness of such county to the State as shown by the statement of the account between the county and the State made by the Auditor General on the first day of July next previous to such apportionment, which amount shall be apportioned by the board of supervisors of the proper county at the same time as State taxes contained in said apportionment of the Auditor General, and shall be levied in the same manner as and become a portion of the county taxes for the same year, unless the said indebtedness shall have been paid to the State before October first: *Provided*, That such portion thereof, if any, as should be assessed to a particular township, shall be apportioned to and assessed upon such township, ward or city.

Auditor General to apportion.

Basis of apportionment.

County indebtedness to State.

To be portion of county tax.

Proviso.

Auditor General is bound to take notice of statutes changing county boundaries and creating new counties, and is bound to know what land falls in each and should apportion the State tax upon the basis of the assessed value of the land in each as last equalized.—Ontonagon Supervisors v. Gogebic Supervisors, 74 M. 721. State Board of Equalization.—129 e. s. C. L. '97. Auditor General should anticipate the existence of a new county which has been organized by legislative act in the apportionment of the State taxes and make apportionment accordingly.—Auditor General v. Menominee Supervisors, 89 M. 552. As to organization of new counties, see notes to Sec. 105.

When a statement of account between a county and the State showing a debt due the State is correctly and regularly made and the ascertained amount is seasonably certified in due form to the clerk of the county, it is the duty of the board of supervisors at once to make proper apportionment, and if they shall refuse to do so, they may be compelled by mandamus.—Auditor General v. Jackson Supervisors, 24 M. 237. Duty of board of supervisors within twenty days after indebtedness to State is certified to proper county officers to levy a tax to pay such indebtedness or to submit to vote of people the issue of bonds for that purpose.—2487 C. L. '97. Services of troops in aid of civil authorities,—1623 C. L. '97.

See Sec. 99.

SEC. 36. (3859) It shall be the duty of the township clerk of each township, on or before the first day of October of each year, to make and deliver to the supervisor of his township, a certified copy of all statements and certificates on file, and of all records of any vote or resolution in his office authorizing or directing moneys to be raised therein by taxation for township, school, highway, drain, and all other purposes, together with a statement of the aggregate amount thereof, and such certified copies shall, by such supervisor, be delivered to the clerk of the county on or before the second Monday of said month, and the same shall by said clerk be laid before the board of supervisors at its annual meeting and filed in his office.

Duties of township clerk.

Duties of supervisor and county clerk.

TOWNSHIP TAXES: The clerk's certificate of record of the vote of township board is to be executed and delivered in time for delivery to the county clerk before the meeting of the board of supervisors on or before the second Monday in October.—Peninsula Iron Co. v. Crystal Falls, 60 M. 510. A township board has special and limited authority, which must appear upon the face of the record.—Harding v. Bader, 75 M. 316. The presumption is in favor of the express terms of the record where no clerical error is shown, nor can

a record be contradicted or varied by parol evidence.—Michigan Land Co. v. Republic Township, 65 M. 628. Where clerk's certificate is regular on its face and nothing is shown to invalidate the proceedings prior thereto, it is conclusive upon the supervisor and it makes it his duty to assess the tax and to issue his warrant for its collection. In case of issue by clerk of certificate unauthorized by law, supervisor is bound to take notice of the total absence of such legal authority.—Smith v. Crittenden, 16 M. 152.

If the several amounts to be raised are stated in township clerk's certificate, his omission to aggregate the taxes is unimportant.—Boyce v. Auditor General, 90 M. 314.

Township may vote not to exceed $1,000 for contingent or ordinary expenses. —2269 C. L. '97; but no more except as voted for specific purposes. Action of township board under statute authorizing them to vote money to defray twp. expenses must be had at a regular meeting.—Peninsula Iron Co. v. Crystal Falls, 60 M. 510. Time and manner of voting township taxes.—2309 C. L. '97. Township taxes voted by township board before submission are invalid.—Auditor General v. Sparrow, 116 M. 574. When electors neglect or refuse to vote money for ordinary township expenses, township board may, at regular meeting, vote necessary amount but no more than might have been voted by electors.—2349 C. L. '97. Township may vote not exceeding 1 per cent on assessed valuation upon prior notice for erecting public buildings.—2270 C. L. '97; requires a majority of qualified electors voting.

Neglect or refusal of electors to vote money for ordinary township expenses must appear upon record of township board to authorize board to vote same, and record of meeting at which board voted must show that all members were present or notified.—Harding v. Bader, 75 M. 316; Auditor General v. McArthur, 87 M. 457. There is no presumption that electors refused or neglected to vote sufficient funds to defray ordinary expenses, and where township board votes money for that purpose the record must affirmatively show such neglect or refusal; and the same rule applies to the voting of a money tax for highway purposes.—Newaygo Mfg. Co. v. Echtinaw, 81 M. 416. Electors cannot be held to have neglected or refused to vote moneys for the contingent or poor funds when these items were not submitted to them; and the township board has no authority to vote either except upon such neglect or refusal.—Tillotson v. Webber, 96 M. 144; Auditor General v. D. S. S. & A. R. R. Co., 116 M. 122.

Township record showing vote of highway and contingent taxes upon the day of the annual township meeting sufficiently shows that the action taken was that of the electors, and it will be presumed that it was taken at the time provided by statute.—Auditor General v. Longyear, 110 M. 223. Further as to voting taxes, Crittenden v. Robertson, 13 M. 58; People v. Township Board of Woodhull, 14 M. 28.

Compensation of township officers.—2374-5 C. L. '97. Protection of orchards and vineyards.—5688 C. L. '97. Destruction of noxious weeds.—3499, 3505 C. L. '97. See 4174 C. L. '97, Am. Act 220, 1899.—Expense to be assessed against lands.—5715 C. L. '97. Cutting milkweed.—5719 C. L. '97; expense, how assessed.—5724 C. L. '97. Establishing section corners assessed upon real estate.—2511 C. L. '97. Relocating and perpetuating section corners when desired by resident owners, to be assessed upon lands of persons refusing to pay.—2627 C. L. '97; Act 248 of 1899. Repair, etc., of fences, to be assessed to land of person neglecting to pay.—2418 e. s. C. L. '97; Gilson v. Munson, 114 M. 671. Support of poor.—4547-8 C. L. '97. Maintenance of charges at county poorhouse.—4544 C. L. '97.

Payment of railroad aid bonds.—3986 e. s. C. L. '97. Payment of town bonds. —2405 C. L. '97. Mandamus lies to compel town clerk to issue a certificate for levy of tax to satisfy judgment against the township.—Courtright v. Brook, Township Clerk, 54 M. 182. Township bonds, if legally issued, are fixed charges against the township and record of vote of township board to raise money to pay such bonds need not show neglect or refusal of voters to vote money for such purpose.—Newaygo Mfg. Co. v. Echtinaw, 81 M. 416. Certain townships being held liable for county bonds issued for their benefit, action on writ of mandamus was suspended to permit assessment in the following year.—People v. Townships of Porter and Calvin, 18 M. 101.

See also 2335 C. L. '97. Further as to township taxes see Upton v. Kennedy, 36 M. 215; Silsbee v. Stockle, 44 M. 561; Peninsula Iron Co. v. Crystal Falls, 60 M. 510; Willams v. Mears, 61 M. 86; Mills v. Township of Richland, 72 M. 100; Harding v. Bader, 75 M. 316.

Supervisor can only assess such taxes as are properly certified to him by township clerk for assessment unless evidenced by other official action and which the law makes it his duty to assess without clerk's certificate.—Sage v. Auditor General, 72 M. 638. Where township clerk's certificate showed a given sum voted for township purposes and warrant and tax roll showed greater sum, held that proof of one certificate raises presumption against the existence of another not shown to have been made.—Case v. Dean, 16 M. 12.

Township has no authority under the provisions of 2268 C. L. '97 to raise money by tax to be expended for fair-ground purposes.—French v. Township of South Arm, 6 Det. Leg. News 902.

Mandamus will lie against township to enforce the assessment of amount to pay county tax, embezzled by township treasurer.—Hart Township v. Oceana Co., 44 M. 417.

SYNOPSIS OF HIGHWAY LAW: 4035-4228 C. L. '97. Limitation of appropriation by highway commissioner for laying out, altering or discontinuing highway without concurrence of the township board $100.—4040. Determination and apportionment—expense of line roads.—4047. Bridges between town-

ships and between township and village or city.—4051-6. Assessment for damages.—4065. Assessment for highway purposes.—4072-85. Collection of highway labor tax.—4087-95, 4171. Allowance for labor previously performed.—4096, 4098. Allowance for voluntary improvement.—4102. Assessment and collection of money tax for highway purposes.—4104-7, 4112. Assessment for emergent improvement.—4120. Removal of encroachments.—4122, Am. Act 244 of 1899. Erection, repair and preservation of bridges.—4129-34, 4138-40. Allowance for planting shade trees.—4164; for watering troughs or fountains.—4166; for use of wagons with tires not less than three inches in width for hauling loads exceeding 800 lbs. in weight.—4226-7. Discretion of commissioner to require 25¢ of highway tax to be paid in money.—4165. Report of overseer to commissioner.—4171, 4178, Am. Act 220 of 1899. No error or omission of duty on the part of overseer shall invalidate highway tax assessed on township roll. —4179. Assessment for purchase of plank or toll road.—4184. Blanks for commissioner and overseers to be furnished by Auditor General.—4191. Assessment for tools.—4192-4. Assessment for highway orders.—4211. Exemption of honorably discharged soldiers and marines from poll tax.—4228.

Assessment of highway and railroad grades.—4249-52 C. L. '97. Township road system.—4287 C. L. '97.

Labor and money tax which electors may vote under 4074 C. L. '97, is only for ordinary improvements for highways and bridges during the year.—Longyear v. Auditor General, 72 M. 415. An act requiring the township to raise $4,000 for bridge is in violation of Sec. 9, Art. X, Constitution.—Township of Ada v. Kent Circuit Judge, 114 M. 77. Township board has no authority to exempt certain property from assessment for highway taxes.—Auditor General v. D. S. S. & A. R. R. Co., 116 M. 122.

A special highway tax exceeding the amount allowed by law and assessed for highway not legally laid out without any showing in the township records that it had been voted is void.—F. & P. M. R. R. Co. v. Auditor General, 41 M. 635. Highway tax where no inhabitants and no actual or contemplated highways held invalid.—Michigan Land Co. v. Township L'Anse, 63 M. 700. Highway tax illegal where no action is properly certified to supervisor as taken by township meeting or town board, and board cannot act except on failure of electors, etc., which should appear on record.—Gamble v. Auditor General, 78 M. 302. Voters cannot be said to have neglected or refused to vote highway tax unless question was submitted, and tax voted by township board without such neglect or refusal is unauthorized.—Auditor General v. D. S. S. & A. R. R. Co., 116 M. 122.

A highway tax is illegal when ordered by the board of supervisors without the certificate of the township clerk that such tax had been imposed by the township and it not appearing that such tax was fixed by the township board or that the electors either voted or failed to determine the amount.—Boyce v. Auditor General, 90 M. 314. See also as to sufficiency of record relative to taxes ordered raised. A special highway tax cannot be levied upon the property of a township to pay the indebtedness of road districts therein.—McFarlan v. Township of Cedar Creek, 93 M. 558.

Further as to highway taxes see Silsbee v. Stockle, 44 M. 561; Alcona Co. v. White, 54 M. 503; Lake Superior C. R. & I. Co. v. Thompson, 56 M. 493; Peninsula Iron Co. v. Crystal Falls, 60 M. 510; Michigan Land Co. v. Township L'Anse, 63 M. 700; Mich. Land Co. v. Republic Township, 65 M. 628; Mills v. Township of Richland, 72 M. 100; Turnbull v. Township of Alpena, 74 M. 621; Newaygo Mfg. Co. v. Echtinaw, 81 M. 416; Hoffman v. Lynburn, 104 M. 494, etc.

DRAIN TAXES: Townships are not agencies to originate proceedings or levy or collect drain taxes, nor do moneys collected belong to township.—Emerson v. Township of Walker, 63 M. 483; Barker v. Vernon, 63 M. 516. See notes to Sec. 37. Duties of township clerk relative to drain taxes.—4356 C. L. '97. But see "Drain Taxes," Sec. 37.

SYNOPSIS OF SCHOOL LAW: 4639-4838 C. L. '97. Inspectors may attach to a school district any person residing in township and not in any organized district at his request; and for all district purposes, except raising tax for building school house, such person shall be considered as residing in such district, but when set off to a new district no sum shall be raised for such person as his proportion to the district property.—4655. Voting tax for school house—limit of tax.—4665. Estimate of school tax.—4674; report to township clerk.—4675. Annual report of taxes assessed.—4677. Purchase of text books.—4681. Purchase of appendages.—4686. Director's report of moneys raised.—4689. Report of school taxes by township clerk to supervisor.—4701. Apportionment of school taxes.—4703. Assessment of school tax—If any taxes provided for by law for school purposes shall fail to be assessed at the proper time the same shall be assessed in the succeeding year.—4704. Assessment and apportionment of one mill tax.—4705. Assessment and application of taxes in divided district.—4706. Taxes in fractional districts.—4707. Statement to township treasurer of school and library tax.—4708. Statement of one mill tax in fractional district.—4709. Collection and apportionment of taxes on division of district.—4710. Apportionment of money due fractional district.—4713. Two-thirds vote required to borrow money—limit of indebtedness.—4717. Amended Act 190 of 1899. Voting tax to redeem bonds.—4719. Supervisor to assess amount of judgment against district—collection.—4727. Collection of judgment for school house site.—4734. Appeal from action of inspectors.—4743 e. s. Graded school districts.—4746-51 Am. Act 238 of 1899. Voting tax for school libraries.—4763. Liability of township clerk and supervisor in regard to district taxes.—4771. Voting tax for text books.—4776. Estimate of amount to be raised.—4778. Publication of proceedings of annual school meeting in graded district.—4800. Purchase of flag.

—4802. Compensation of county commissioner of schools and examiners.—4827. Voting tax in township school district.—4831. Assessment.—4832. Provision as to taxes.—4836. Compensation of members of board.—4837.

Assessment for public libraries in cities—3449, 3458, 3460 C. L. '97.

Section 4711 C. L. '97 providing that township treasurer shall retain full amount of school taxes on roll subject to order of the district officers, is superseded by Sec. 52 of the General Tax Law.—3875 C. L. '97.

See Secs. 37 and 99.

A school district has no power to levy a tax except for purposes specified by statute.—Hinman v. School District, 4 M. 168. School taxes voted by boards before submission are invalid.—Auditor General v. Sparrow, 116 M. 574. Board has no authority to raise money for school purposes unless voters have neglected or refused so to do.—Auditor General v. D. S. S. & A. R. R. Co., 116 M. 122. School taxes not affected by failure of equalization.—Auditor General v. Gurney, 109 M. 472.

4704 C. L. '97 requires the supervisor to assess taxes levied by school districts. He has no discretion in the matter but is bound to spread on his tax roll school taxes properly certified and directed to be levied by the board of supervisors.—Union School District v. Parris, 97 M. 593. Sub. 6, 4665 C. L. '97, which prohibits the taxation of lands for school buildings unless situated within 2½ miles from the schoolhouse site, applies only to primary schools, and in a graded school district all land within the district may be taxed for the erection of the schoolhouse.—Keweenaw Ass'n. v. School District, 98 M. 437. Sec. 4704 C. L. '97, which provides that school taxes not assessed at the proper time shall be assessed the succeeding year, applies where the district board fails to certify the tax to the township clerk in time for certification to the supervisor for assessment.—Wilcox v. Township of Eagle, 81 M. 271. School taxes for a district which includes lands in another county are properly levied upon those lands.—Johnston v. Cathro, 51 M. 80.

Further, as to school taxes, see Stuart v. School District, 30 M. 69; Jones v. Wright, 34 M. 371; Burns v. Bender, 36 M. 195; Midland School Districts, 40 M. 551; Stockle v. Silsbee, 41 M. 615; Bryant v. Moore, 50 M. 225; Johnston v. Cathro, 51 M. 80; Port Huron Board of Education v. Treasurer, 57 M. 47; Moiles v. Watson, 60 M. 415; Burroughs v. Goff, 64 M. 464; Wilcox v. Township of Eagle, 81 M. 271; Keweenaw Ass'n. v. School District, 98 M. 437; Sheldon v. Marion, 101 M. 256; Auditor General v. D. S. S. & A. R. R. Co., 116 M. 122.

LOCAL IMPROVEMENTS: The whole theory of a legal assessment for local improvements depends upon a uniform rule of charges within some defined district and resting upon some principle which is intelligible.—Clay v. Grand Rapids, 60 M. 451. A special assessment which discriminates between the property of persons taxed cannot be sustained.—White v. Saginaw, 67 M. 33. Every valid assessment must be based upon some legally ordained basis of apportionment and not arbitrarily.—Detroit v. Daly, 68 M. 502. Charter authority to make local assessments must be strictly followed, and when the mode is prescribed by the charter or by ordinances adopted under its authority the measure of power is limited thereby.—Whitney v. Village of Hudson, 69 M. 189.

Where charter requires board of assessors to enter upon special assessment roll the valuation of each parcel within the district, as shown by the last preceding general assessment roll, the valuation of a parcel lying partly within and partly without the district may be apportioned where it was assessed as one tract upon the general roll.—Boehme v. Monroe, 106 M. 401.

Terminal property of a railroad company cannot be sold under provisions of special charter for non-payment of assessment for local improvements.—L. S. & M. S. R. R. v. Grand Rapids, 102 M. 374. Property of railroad company necessary to enjoyment of its franchise, such as portion of road bed, cannot be sold under proceedings to collect assessment levied thereon for municipal improvements.—D. G. H. & M. R. R. Co. v. Grand Rapids, 106 M. 13. A railroad company is not liable to assessment for paving a street because its track is located therein and abuts upon a section of the street so improved, although the assessment is made according to frontage.—Boehme v. Monroe, 106 M. 401.

Payment of specific taxes "in lieu of all other taxes" does not exempt from assessment for local improvements.—L. S. & M. S. R. R. Co. v. Grand Rapids, 102 M. 374. But a section of railroad right-of-way occupied by tracks and used for no other purpose, cannot be assessed for improving a street which crosses it under city charter requiring such assessment to be according to benefits.—D. G. H. & M. R. R. Co. v. Grand Rapids, 106 M. 13. Further, as to assessment for, see Woodbridge v. City of Detroit, 8 M. 274; Jackson v. Detroit, 10 M. 248; Goodrich v. Detroit, 12 M. 279; Hobart v. Detroit, 17 M. 246; Scofield v. Lansing, 17 M. 437; Motz v. Detroit, 18 M. 495; Hoyt v. Saginaw, 19 M. 39; Steckert v. East Saginaw, 22 M. 104; Lansing v. Van Gorder, 24 M. 456; Powers' Appeal, 29 M. 504; Warren v. Grand Haven, 30 M. 24; Jones v. Water Commissioners, 34 M. 273; Thomas v. Gain, 35 M. 155; Butler v. Detroit, 43 M. 552; Sheley v. Detroit, 45 M. 431; Cumings v. Grand Rapids, 46 M. 150; Rentz v. Detroit, 48 M. 544; Beidler Mfg. Co. v. Muskegon, 63 M. 44; Adams v. Bay City, 78 M. 211; Manistee v. Harley, 79 M. 238; Thayer v. Grand Rapids, 82 M. 298; Auditor General v. Fisher, 84 M. 128; Ely v. Grand Rapids, 84 M. 336; Sligh v. Grand Rapids, 84 M. 497; Davies v. Saginaw, 87 M. 439; Whitney v. Port Huron, 88 M. 268; Townsend v. Manistee, 88 M. 408; Hembling v. Big Rapids, 89 M. 1; Beecher v. Detroit, 92 M. 268; School Furniture Co. v. Grand Rapids, 92 M. 564; Lundbom v. Manistee, 93 M. 170; Auditor General v. Maier, 95 M. 127; Powers v. Grand Rapids, 98 M. 393; Big Rapids v. Supervisors, 99 M.

351; Trowbridge v. Detroit, 99 M. 443; Lumber Co. v. East Jordan, 100 M. 201; Borgman v. Detroit, 102 M. 261; L. S. & M. S. R. R. Co. v. Grand Rapids, 102 M. 374; Goodwillie v. Detroit, 103 M. 283; Moore v. Detroit, 103 M. 292; Turner v. Detroit, 104 M. 326; Shimmons v. Saginaw, 104 M. 511; Harper v. Grand Rapids, 105 M. 551; Duffy v. Saginaw, 106 M. 335; Boehme v. Monroe, 106 M. 401; Scotten v. Detroit, 106 M. 564; Nelson v. Saginaw, 106 M. 659; Brown v. Saginaw, 107 M. 643; Atwell v. Barnes, 109 M. 10; Balch v. Detroit, 109 M. 253; Fitzhugh v. Bay City, 109 M. 581; Bandistel v. Jackson, 110 M. 357; Detroit v. Judge Recorder's Court, 112 M. 588; Thompson v. Detroit, 114 M. 502; Kalamazoo v. Francoise, 115 M. 554; Bogert v. Jackson Circuit Judge, 118 M. 457; Walker v. Ann Arbor, 118 M. 251; Scribner v. Goodrich v. Detroit, 7 Det. Leg. News 11; Goodrich v. Detroit, 7 Det. Leg. News 11.
See Sec. 99.

Supervisors to apportion taxes among townships.

SEC. 37. (3860) The board of supervisors, at their annual session in October in each year, shall ascertain and determine the amount of money to be raised for county purposes, and shall apportion such amount, and also the amount of the State tax and indebtedness of the county to the State among the several townships in the county in proportion to the valuation of the taxable property therein, real and personal, as determined by them for that year, which determination and apportionment shall be entered at large on their records. They shall also examine all certificates, statements, papers and records submitted to them, showing the moneys to be raised in the several townships for school, highway, drain, township and other purposes. They shall hear and duly consider all objections made to raising any such moneys by any taxpayer to be affected thereby. If it shall appear to the board that any certificate, statement, paper or record is not properly certified, or that the same is in anywise defective, or that any proceeding to authorize the raising of any such moneys has not been had, or is in anywise imperfect, and such certificate, statement, paper, record or proceeding can then be corrected, supplied or had, such board may authorize and require such defects or omissions or proceedings to be corrected, supplied or had. They may refer any or all such certificates, statements, papers, records and proceedings to the prosecuting attorney, whose duty it shall be to examine the same and, without delay, report in writing his opinion to the board. They shall direct that such of the several amounts of money proposed to be raised for township, school, highway, drain and all other purposes, as shall be authorized by law, be spread upon the assessment roll of the proper townships, wards and cities. Such action and direction shall be entered in full upon the records of the proceedings of the board, and shall be deemed final as to the levy and assessment of all such taxes.

To examine requirements of townships.

To hear objections.

Correction of records, etc.

Duties of prosecuting attorney.

Township, etc., taxes.

Record of action.

Annual session second Monday in October; county clerk to publish notice three weeks.—2475 C. L. '97. Annual session in October embraces all adjournments.—Hubbard v. Winsor, 15 M. 146. Clerk to record all proceedings.—2477 C. L. '97. Final passage requires majority of all members elect.—2476 C. L. '97.

COUNTY TAXES INCLUDES: Not exceeding $1,000 to build or repair roads or bridges, by two-thirds vote of board of supervisors.—Sec. 9, Art. X, Const.; 2484 C. L. '97, Sub. 15. Laying out highways and constructing bridges.—Sec. 11, Art. X, Const. Erecting and repairing county bridges.—2441 C. L. '97, and State and territorial roads.—2498, 2501 C. L. '97. Burial lots for soldiers.—1697 C. L. '97. Burial of soldiers.—Act 242 of 1899. Soldiers' monuments.—1700-2 C. L. '97. Courthouse.—2454 C. L. '97. Judgments.—2471 C. L. '97. Repair of public buildings.—2480-1 C. L. '97. Publication of proceedings.—2482 C. L. '97. Purchase of real estate necessary for poor-farm and public buildings; re-

moval of county buildings within limit of county seat; erection of necessary public buildings, but may not borrow or raise by tax more than $1,000 in any year for constructing or repairing public buildings, highways or bridges unless authorized by majority vote of electors; payment of loan made by board within 15 years from date of loan; compensation for services rendered for and claims allowed against county; current expenses and necessary charges incident to or arising from the execution of lawful authority of board of supervisors within limitation prescribed by law.—2484 C. L. '97; but the power to fix and determine the site of any building, to remove site of county buildings within limits of county seat, to erect buildings, to abolish or revive distinction between township and county poor, to make regulations for destruction of wild beasts and obnoxious weeds, to authorize townships by vote of electors to borrow or raise money by tax in excess of $1,000 for roads and bridges, to determine the relative proportion of the expense of roads and bridges between townships and to transact business of the county in cases where no other provision is made, requires two-thirds of all the members of the board.—2485 C. L. '97.

Transportation and distribution of public documents.—Sec. 32, Act 44 of 1899. Compensation of members of boards of supervisors.—2503 C. L. '97; and board of auditors, Wayne county.—2526 C. L. '97. Salary of stenographers. —374 e. s. C. L. '97. Salary of county officers.—2649 C. L. '97; in Wayne.—2526 C. L. '97. Compensation of county treasurer.—2542 C. L. '97; of prosecuting attorney.—2562, 2564 C. L. '97; of county clerk.—2576 C. L. '97. Salary of probate judges.—2551-2 C. L. '97; of probate register.—2554 C. L. '97. Expenses of probate courts.—683-7, 690 C. L. '97. Salary of sheriffs, U. P., 2598-9 C. L. '97. Insurance of county buildings.—2543 C. L. '97. Assistance in criminal cases.—2569 C. L. '97. Jail, etc., charges.—2653 C. L. '97. Damages and compensation awarded in condemnation of plank or toll road.—2516 C. L. '97. Books for clerk's office and clerk's calendar.—2574 C. L. '97; for register of deeds.—2615 C. L. '97; and surveyors.—2622 C. L. '97. County clerk's books for soldiers' discharges, and fees for recording.—1704 e. s. C. L. '97. Seal for register of deeds.—2616 C. L. '97. Plats and field notes of survey of lands in county.—2624 C. L. '97. Enrollment of militia.—1576 C. L. '97. Weights and measures. —4884 C. L. '97. Support of defectives.—4513 C. L. '97; and paupers.—4539 C. L. '97. Infectious diseases.—4424 C. L. '97. Soldiers' relief fund.—Act 214 of 1899. Restoring plats.—3289 C. L. '97. Building poor house.—4508 C. L. '97. Support of county poor.—4527 C. L. '97. Payment of judgment for damages by mob.—Act 252 of 1899.

Fish shutes in certain counties.—Acts 116 of 1893 and 118 of 1895. Indebtedness to State, tax or bonds for.—2487 C. L. '97. Expenses of establishing lines and corners, to be assessed upon lands benefited.—2627 C. L. '97. Expenses of mine inspection, to be assessed in separate column.—5494 C. L. '97. Removal of county seat.—Sec. 8, Art. X, Const. Vote of county for loan or tax for removal of county seat.—2493 C. L. '97. Wayne board of auditors shall report to supervisors amount of tax necessary to be raised for county purposes.—2532 C. L. '97. County road system.—4262 e. s. C. L. '97.

Power of board of supervisors to fix compensation or adjust claims.—See Sec. 10, Art. X, Const.

Failure of board of supervisors to examine certificates, etc., is an irregularity at most, and in the absence of an affirmative showing of defects in taxes or that defendant taxpayer has been denied a hearing the validity of the taxes will be presumed.—Auditor General v. Hill, 98 M. 326.

Determination of board of supervisors must be recorded in the records of the board and must be signed by the chairman and the clerk.—2502 C. L. '97. Neglect or refusal of members of the board to perform any duty required by law.—2504 C. L. '97.

Apportionment of indebtedness of vacated villages if in two or more townships.—2954 C. L. '97.

"To raise money by tax or loan" does not warrant resort to both methods at one time to raise an amount which both together would produce.—Loomis v. Rogers Township, 53 M. 135.

Board of supervisors has no power under Subs. 7 and 10, Sec. 2484 C. L. '97, to borrow the money necessary to defray the current expenses and charges of the county, but the same must be raised by taxation.—Supervisors v. Warren, 98 M. 144.

Mandamus refused to compel provision to be made by taxation to pay warrants issued by board of supervisors for county building purposes in excess of statutory limits when not submitted to vote.—Pack v. Supervisors of Presque Isle, 36 M. 377; see also Callam v. Saginaw, 50 M. 7. As to manner of submitting vote see Thomas v. Kent Circuit Judge, 116 M. 106.

Mandamus granted to compel supervisors to spread upon roll sum lost by State in consequence of failure of county treasurer to account for moneys received at tax sale conducted by him.—Attorney General v. Supervisors St. Clair Co., 30 M. 388.

It is competent for the board of supervisors to raise money for building bridges, also for the destruction of Canada thistles and other noxious weeds, the destruction of which is provided for by law; and this may be regarded as a highway tax.—Tweed v. Metcalf, 4 M. 579.

The power of taxation implies apportionment and when that power has been exercised courts will not declare it void unless a flagrant invasion of private rights is clearly demonstrated.—School Furniture Co. v. Grand Rapids, 92 M. 564. Board not required to determine the amount of State tax to be raised, but simply to apportion the State tax, reference being had to the Auditor General's certificate.—Hoffman v. Lynburn, 104 M. 494. State and county taxes are wholly distinct in their object, destination and amount

from the other taxes; they stand upon their own necessity and have no such natural or legal connection with the others as to be necessarily involved in the same fate.—Pillsbury v. Auditor General, 26 M. 245.

Board having fixed the amount to be raised at a percentage on the assessed valuation, Held valid, being just as certain as though calculated.—Hubbard v. Winsor, 15 M. 145. But if amounts are definitely fixed by calculation no question can be raised.

The requirements that the board of supervisors shall ascertain and determine the amount to be raised, etc., and apportion among townships, etc., and that their action shall be entered in full upon the records, are mandatory.—Boyce v. Sebring, 66 M. 210. As to action of board and record thereof see Boyce v. Auditor General, 90 M. 314.

Boards of supervisors have no general power to establish claims in favor of the counties against townships.—People v. Wright, 19 M. 351.

In Fay v. Wood, 65 M. 390, objection being made to the assessment roll for want of statutory certificates, and it being claimed that the appearance of the roll showed that one or more leaves had been detached, it was held that a question of fact was presented whether the roll was properly certified when delivered to the supervisor.

The board of supervisors does not originate township or school taxes.—Robbins v. Barron, 33 M. 124.

COUNTY ROAD SYSTEM: 4262-86 C. L. '97. In counties which have voted to adopt the county road system provided for by Act 149 of 1893, the board of supervisors are required to apportion such tax for county roads as shall be certified to them under the provisions of Sec. 20 of said act, and assessors must put such tax in a separate column on the roll, to be headed "County Road Tax."—4281 C. L. '97.

AGRICULTURAL SOCIETIES: Assessment for.—5947 C. L. '97. Assessment void if tax was ordered without receiving sworn certificate showing statutory amount raised by the society.—Hall v. Kellogg, 16 M. 135; Hogelskamp v. Weeks, 37 M. 422. But county tax will not be invalidated unless it is conclusively shown that amount therefor was included therein.—Boyce v. Auditor General, 90 M. 314. As to presumption that certificate was present.—Silsbee v. Stockle, 44 M. 561. As to manner of apportionment.—Harding v. Bader, 75 M. 316.

HIGHWAY TAXES: The board of supervisors has no power to raise money in a county tax to be expended generally upon highways.—Sage v. Auditor General, 72 M. 638. Highways and roads are by the constitution put under the control of the board of supervisors, not arbitrarily, but under legal restrictions, and those restrictions have confined them to State and territorial roads; and they can have no occasion to raise money for other roads, and they must exercise their own judgment in expending such moneys as they may lawfully raise. A resolution of a board of supervisors providing for raising money to be paid over to towns without any definition of purposes and to be spent under direction of a town officer is held to be unauthorized and void.—Attorney General v. Bay Co. Supervisors, 34 M. 46. A tax voted by the board of supervisors to be included in the county tax to be distributed among and expended by the several supervisors for highway purposes is illegal.—Gamble v. Auditor General, 78 M. 302.

SYNOPSIS OF DRAIN LAW: 4308-96 C. L. '97. Where benefits and assessments for drain laid in one county extend to lands in adjoining county, commissioners of counties affected shall act jointly.—4312. Where drain runs through city appeal from assessment to be to common council.—4313. No drain tax spread until all records have been filed with county clerk.—4314. Petition for drain.—4319, Am. Act 272 of 1899. Award of damages to be deducted from assessment of benefits.—4331. Order of determination shall include description of lands to be assessed for benefits, said lands to constitute special assessment district. Notice of letting to be served on resident owners and to contain description of lands. Review of assessment.—4340, Am. Act 272 of 1899. Determination of period of collection.—4341 Parties assessed to be preferred in awarding contract.—4342; Am. Act 272 of 1899. Commissioner to apportion per cent of benefits to township and to lands benefited, subject to review.—4344; Am. Act 272 of 1899. Appeal to probate court.—4345, Am. Act 272 of 1899. Appointment of board of review—review of assessment—review upon certiorari.—4346, Am. Act 272 of 1899. Who may not act upon appeal.—4347. Review—lands added to district—notice to nonresident owner—decision of board of review final.—4348, Am. Act 272 of 1899. Costs.—4349, Am. Act 272 of 1899. Assessment to be for benefits—description of lands.—4350. Assessment and collection on part-paid and state lands—report of assessment upon state lands to be made by supervisor to Commissioner of State Land Office and amount to be paid by Auditor General on certificate of Commissioner.—4351; but the sum of all drain taxes that may be assessed against any state lands, including all drain taxes heretofore paid by the state, shall not aggregate a sum greater than 50 per cent of the price at which said lands are held by the state. Additional assessment not subject to review or appeal.—4352. Adjournment of review—appeal by township.—4353, Am. Act 272 of 1899. Computation for assessment.—4354, Am. Act 272 of 1899. Commissioner to make special assessment roll for each township and city affected and shall certify thereon his determination as to time of payment—rolls to be filed in office of township or city clerk before last Wednesday in September.—4355, Am. Act 272 of 1899. Clerk to certify to supervisors amount to be assessed—supervisors to lay statement before board of supervisors at next annual meeting.—4356. Supervisor to spread assessment when so directed by board.—4357. Supervisor to give township treasurer a statement of the amounts assessed at large in the township and endorse

upon special assessment roll in clerk's office the amount of benefits spread on his tax roll.—4358. Collection of drain taxes under provisions of general tax law—taxes a lien upon land.—4359. (Provision of same section that tax shall be a personal claim against owners is deemed to be invalid. See notes to section in Compiled Laws of 1897.) Lands to be returned for delinquent tax as for other taxes.—4360. Drain taxes collected to be accounted for to county treasurer—may be paid to township or county treasurer with drain orders on same drain.—4362. Collection not to be enjoined.—4363-4. Proceedings for collection.—4365. Relaying or completion of drain—reassessment of benefits—allowance upon reassessment for sums paid—provisions apply to drains laid under prior laws.—4366, Am. Act 272 of 1899. Drain taxes charged back and reassessed.—4367. Suit for drain taxes.—4368-70. Drain tax subject to be set aside for error in description or other defects in roll to be reported by commissioner to board of supervisors at October session, who shall order reassessment upon proper description. Such report may be made at any time before the sale of the land for such tax.—4369, C. L. '97. (Whenever this is done after the lands are returned by township treasurer a report of the action taken should be at once certified to the Auditor General by county clerk.) Drains traversing more than one county—appointment of special commissioners— assessment apportioned to counties and certified to clerks—assessment and collection as hereinbefore provided—assessment for cleaning, straightening, deepening, widening or extending drains—provisions for assessment and collection same as for other drain taxes.—4370-80.

County drain commissioner shall be a party in any action to set aside drain tax.—Act 141 of 1899.

The report of a committee appointed to tabulate the report of the township clerk to the county clerk of moneys voted to be raised in the several townships, is not sufficient to legalize a drain tax spread upon the assessment roll without direction of the board of supervisors. In this respect drain taxes appear to be on a different footing from other taxes.—Post v. Harris, 95 M. 321.

A warrant for the collection of drain taxes is fatally defective if the taxes are not so spread on the assessment roll as to identify the several drains and the levy for each.—Dunning v. Calkins, 51 M. 586.

Further as to drain taxes see Butler v. Supervisors of Saginaw Co., 26 M. 22; Harbaugh v. Martin, 30 M. 234; Dawson v. Township of Aurelius, 49 M. 479; Brownell v. Gratiot Supervisors, 49 M. 414; Clark v. Drain Commissioner, 50 M. 618; Wallace v. Sortor, 52 M. 159; Whiteford v. Probate Judge, 53 M. 130; Bixby v. Goss, 54 M. 551; Frost v. Leatherman, 55 M. 33; Emerson v. Township of Walker, 63 M. 483; Barker v. Township of Vernon, 63 M. 516; Alger v. Slaght, 64 M. 589; Lindsay v. Eastwood, 72 M. 336; Taylor v. Township of Avon, 72 M. 604; Cook v. Auditor General, 79 M. 100 (on part paid); Mason v. New Haven Township, 82 M. 435; Conley v. St. Clair Supervisors, 88 M. 245; Nugent v. Erb, 90 M. 278; Tinsman v. Monroe Supervisors, 90 M. 382; Tile Company v. Snyder, 93 M. 325; Bump v. Jepson, 106 M. 641; Laubach v. O'Meara, 107 M. 29; Atwell v. Barnes, 109 M. 10; Angell v. Courtright, 111 M. 223; Hilton v. Dumphy, 113 M. 241; Smith v. Carlow, 114 M. 67; Brady v. Hayward, 114 M. 326; Kiley v. Bond, 114 M. 447; Hillyer v. Jonesfield, 114 M. 644; Roberts v. Smith, 115 M. 5; Smith v. Board of Supervisors, 115 M. 202; Thomas v. Walker Township Board, 116 M. 597; Houser v. Burbank, 117 M. 463; Lanning v. Palmer, 117 M. 529; Post v. Harris, 95 M. 321; Zink v. Supervisors, Mich. Mandamus Cases 1337; Henderson v. Darling, Mich. Mand. Cases 1339; Snyder v. Supervisors, Mich. Mand. Cases 1340; Auketell v. Hayward, 5 Det. Leg. News 902; Jenny v. Township of Mussey, 6 Det. Leg. News 433, etc.

See Sec. 99.

County clerk to make certificates of apportionment.

SEC. 38. (3861) The clerk of the board of supervisors shall, immediately after the said apportionment, make out two certificates showing the amounts apportioned to each township for State, county and the various township purposes, each tax being kept distinct, one of which he shall deliver to the county treasurer, and the other to the supervisor of the proper township: *Provided*, That if said clerk fail to make such certificate, the supervisor shall take official notice of all certificates, statements, papers and records in the office of the township and county clerk relating to the levy of taxes in his township, and of the action of the board of supervisors thereon.

Proviso.

Supervisor can only assess such taxes as are properly certified to him unless evidenced by other official action and which the law makes it his duty to assess without clerk's certificate.—Sage v. Auditor General, 72 M. 638. Mandamus will not be granted to compel a supervisor to spread upon his roll that portion of the county tax certified to him which, while purporting to have been voted for the purchase of a poor farm, is really to aid in securing a location for a tannery.—Cheboygan Supervisors v. Township of Mentor, 94 M. 386.

See Secs. 36, 37, 99.

TAXES—HOW TO BE ASSESSED.

SEC. 39. (3862) The supervisor of each township or ward, and the assessing officer of each city or village, as provided by law, shall proceed to assess the taxes apportioned to his township, or assessment district, according and in proportion to the valuations entered by the board of review in the assessment roll of the township, ward, village or city of the year: *Provided*, That if the board of review make no such entry, then on the valuation therein as entered by the supervisor or assessor. For the purpose of avoiding fractions in computation, the assessor may add to the amount of the several taxes to be raised not more than one per cent; said excess shall belong to the contingent fund of the township; such taxes shall be entered in separate columns, as follows: All school taxes and the one mill tax in one column, highway taxes in another, township taxes in another, county taxes in another, and the State taxes in another column; and if other taxes are at any time required to be raised, they shall be placed in separate columns. The total of all the taxes assessed against any one valuation or parcel of property shall be added and carried out in the last column upon the right hand side of such roll.

Assessment, how made.

Proviso.

Several taxes entered separately.

Total to be extended.

The several taxes assessed must be clearly defined at the head of the several columns in which they are entered. It is not sufficient that this designation be such that the assessor understands what the tax is; it must be so written at the head of the column that any other person may understand what the tax is for. In Tillotson v. Webber, 96 M. 144, it was held that where an amount charged against a description as "township tax" can be accounted for only by assuming that the general highway tax is included, it is a violation of the law and renders a tax deed for such a tax invalid.

Approval of board of supervisors of assessment to pay judgment against city not necessary, and failure of clerk to certify to board of supervisors cannot defeat assessment, which should be apportioned as are other taxes.—Shippy v. Mason, 90 M. 45.

Supervisor cannot levy tax at his discretion.—Lacey v. Davis, 4 M. 157. The failure of the supervisor to extend the taxes upon a corrected assessment roll received from the board of supervisors after equalization was held in Seymour v. Peters, 67 M. 415, to be fatal to the validity of the taxes. For later cases see Sec. 59.

Assessor cannot alter or amend the rolls as certified by the board of supervisors in any particular.—Clark v. Axford, 5 Mich. 190. Supervisor is not liable for refusing to make an assessment to pay a judgment which was a nullity. —Brewer v. Palmer, 13 M. 104. In Wayne County Savings Bank v. Supervisor, Mich. Mandamus Cases 1348, mandamus issued to compel assessment to pay township bonds. Mandamus having been granted to compel supervisor to assess taxes to pay bonds due, second writ will not be granted to compel an assessment for the uncollected portion until the sale of the lands for delinquent taxes upon which said assessment was made.—Wayne County Savings Bank v. Supervisor, 97 M. 639. In Attorney General v. Finney, Mich. Mandamus Cases 1318, mandamus was granted to compel supervisor to assess State and county taxes as apportioned, he having refused to act on the ground that the equalization was inequitable.

A tax is invalid if it appears only upon a roll to which it does not belong and is omitted from a roll to which the law authorizing it expressly assigned it.—Folkerts v. Powers, 42 M. 283. Repair of fences to be assessed in separate column.—2418 C. L. '97. Assessment of judgment against township, village or city in certain cases.—10182-3 C. L. '97. Assessment to pay indebtedness of vacated village.—2953 C. L. '97. Assessment for public improvements under Act 124 of 1883.—3406 C. L. '97. Provision that taxes be in separate column is mandatory.—Cooley on Taxation 428. The statute requiring the one mill tax to be stated in the column of school taxes is not merely directory, but mandatory.—Case v. Dean, 16 M. 12. The one mill tax should be determined by assessed valuation and not by equalized valuation.—Township of Deerfield v. Harper, 115 M. 678.

In the computation and extension of the taxes the greatest care should be observed. The computation and entry in the assessment roll of the amount to be levied on each parcel of property is a judicial duty of assessors which cannot be delegated to third persons to be performed out of the presence of the assessors or without their supervision.—Black on Tax Titles 120.

Any increase or diminution made by the supervisors in the equalization must be shared alike by both realty and personalty, and a tax is void if the

entire increase is distributed upon the realty, the tax on the land being excessive.—Sinclair v. Learned, 51 M. 335. It is not competent to put one rate upon real estate, another rate upon personal property generally, and still another rate upon certain kinds of corporate stock.—Black on Tax Titles 28. Where a sum of money has been lawfully voted to be raised by taxation for township purposes, the failure of the board of supervisors to direct its levy would not invalidate the action of the supervisors in spreading it upon the rolls.—Upton v. Kennedy, 36 M. 215.

There must be no more levied in the aggregate for any given tax than is authorized, and the proportion charged against each parcel of land or to each person to whom property is assessed, must be no more than such person or property can properly be charged with.—Assessor's Manual 71. The reason for holding a tax sale void when the levy is excessive is that the sale is for the aggregate of all the taxes, so that the tax title is based as much on what is illegal as upon what is lawful.—Silsbee v. Stockle, 44 M. 561. Excessive tax levies are held to invalidate a tax deed because they are unauthorized and that the officer has no jurisdiction to make them; and where such a levy is made upon taxable property contained in the whole roll the entire roll is invalidated, as where an excess of $3.01 of two mill tax was levied upon the property of the township.—Boyce v. Sebring, 66 M. 210.

Any material excess in the State, county or township tax and which are all blended in one column, will render the taxes in such column void.—Case v. Dean, 16 M. 12. Practically any excess is held to be material. An excess of $25.00 in a township tax legally assessed invalidates the sale of land upon which any part of the excess was levied.—Rogers v. White, 68 M. 10. An excess of 45 cts. in highway tax on a parcel of land renders the tax deed therefor void.—Seymour v. Peters, 67 M. 415. An excess of seven or eight cents respectively, against two parcels of land was held to render the tax deed therefor invalid so far as it was based upon the tax for the year in which such excess appears.—Tillotson v. Webber, 96 M. 144. Sale is void where the tax is shown to be "five or six cents" in excess of the amount authorized by law.—Burroughs v. Goff, 64 M. 464. An excess of highway tax over the statutory limit is sufficient to defeat a sale made for an aggregate of taxes of which it forms a part.—Silsbee v. Stockle, 44 M. 561. Where a school district record showed $180.00 voted by electors and no record of increase by the district board and $240.00 was levied by the supervisor, it was held that a tax title based thereon was void.

The foregoing as to the effect of excessive assessment relates in many cases to the invalidating of sales or tax deeds. Under the present law owners have opportunity to have this excess eliminated by the court on the hearing upon petition for decree and cannot be heard to complain in this particular after decree is entered; but it is none the less important that the excesses should be studiously avoided and so prevent the necessity of and the loss incident to a contest over the taxes.

HIGHWAY TAXES: A highway tax is illegal if the manner of levy and collection prescribed by the statutes is not followed.—Ryerson v. Laketon, 52 M. 509. Under 4171 and 4178 C. L. '97, a verified return of delinquent labor taxes by the overseer of highways is essential to confer jurisdiction upon the supervisor to spread the tax upon the township assessment roll.—Hamilton & Merryman Co. v. Township L'Anse, 107 M. 419. A tax deed was held void where the taxes for which sale was made included highway taxes and the overseer of highways had not sworn to the returns of highway labor which he had made to the supervisor.—Hogelskamp v. Weeks, 37 M. 422. A township tax levy for highways is properly added to the other highway taxes on the assessment roll and not to the township tax.—Silsbee v. Stockle, 44 M. 561. A highway money tax when voted must be laid upon all property in the township, including that in incorporated villages.—Ryerson v. Laketon, 52 M. 509. Highway taxes are not necessarily illegal because for roads in contemplation but not laid out.—Sawyer-Goodman Co. v. Crystal Falls, 56 M. 597.

DRAIN TAXES: A warrant for the collection of drain taxes is fatally defective if the taxes are not so spread on the assessment roll as to identify the several drains and the levy for each.—Dunning v. Calkins, 51 M. 556. Drain taxes are separate funds not to be confounded with other or similar assessments.—Wallace v. Sortor, 52 M. 159. Drain taxes assessed at large to be included in column with general township or city tax; those laid upon lands benefited to be spread in separate column headed with name of drain and opposite descriptions separately written and following descriptions assessed for other taxes on said rolls.—4357 C. L. '97. Supervisor's action in assessing drain tax is merely ministerial; he has no authority to change assessments.—Lindsay v. Eastwood, 72 M. 336. Supervisor and township clerk cannot refuse to certify, etc., as to drain taxes, because, in their opinion, the assessments would be invalid because of irregularity in the proceedings.—Laubach v. O'Meara, 107 M. 29. But in Nugent v. Erb, 90 M. 278, the court exercised its discretion and refused mandamus to require supervisor to assess a drain tax where it appeared that no legal drain could be laid out.

Where the board of supervisors in the exercise of their lawful authority have ordered an assessment for the construction of a drain to be spread upon the rolls, a supervisor should not refuse to spread the tax because, in his opinion, the proceedings were irregular, and where he refuses to perform his official duty mandamus will issue to compel him to act.—Scholtz v. Smith, 6 Det. Leg. News 7.

Taxes and charges a lien on Dec. 1.

SEC. 40. (3863) The taxes thus assessed shall become at once a debt to the township, ward or city from the persons to

whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day in December, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or other lien, on such personal property, executed or made after said first day of December, except where such property is actually sold in the regular course of trade.

Precedence of tax lien.

Township can, in suit by its supervisor, collect a personal tax due which the treasurer has failed to collect. The right of action conferred by this section is independent of that derived from Sections 55 and 56, providing for the collection of such delinquent taxes by the treasurer of the township upon warrant issued by county treasurer.—Bangor v. Smith Transportation Co., 112 M. 601. Supervisor to prosecute in name of people, etc.—2331 C. L. '97. A municipality may institute suit to enforce the payment of taxes which are made a debt to the city by statute, and which the treasurer has failed to collect; and recovery may be had against the owner of the property for valid tax, notwithstanding a mistake was made in the name of the person to whom it was assessed.—City of Menominee v. S. K. Martin Lumber Co., 5 Det. Leg. News 771.

In action for taxes assessed against personal property it is not necessary to show diligence upon the part of township treasurer if it appears that taxes were not collected.—Township of Deerfield v. Harper, 115 M. 678. See further for rulings in suits for taxes.

Taxes not a charge upon person or land prior to December, when for the first time the opportunity is offered or the duty arises to pay them.—Harrington v. Hilliard, 27 M. 271. Drain taxes a lien as soon as benefits are apportioned.—Lindsay v. Eastwood, 72 M. 336. A lien for city taxes in cities governed by special charter is fixed by such charter.—Eaton v. Chesebrough, 82 M. 214. Lien for taxes assessed in cities governed by Act 215 of 1895 is as provided in this section. Whether lien for village (corporation) taxes assessed under Act 3 of 1895 attaches when lands are returned to county treasurer after the expiry of warrant—2869 C. L. '97— or not until December 1st. quere.

In construing timber contract containing provision as to payment of taxes assessed; Held, that the mere listing of lands for purpose of taxation is not a completed assessment and that notice of release after listing in April and before the October meeting of the board of supervisors and the ascertainment of the amount to be assessed relieved vendee from payment of taxes thereafter assessed for said year upon said lands.—Rothchild v. Begole, 105 M. 388.

Purchasers at a void tax sale acquire no lien for amount paid for deed or for subsequent taxes in the absence of a statute transferring the State's lien.—Croskery v. Busch, 116 M. 286. Where land sold under claim of good title free from all incumbrances was burdened with tax lien, buyer can recover difference between value of premises with such a title and their worth with the title he received.—Stockham v. Cheney, 62 M. 10.

Purchaser of bank stock prior to December 1 takes it free from any lien for taxes.—St. Johns National Bank v. Township of Bingham, 113 M. 203.

Chattel mortgage does not transfer the legal title to the mortgagee, but affords a security merely.—Wineman v. Electrical Mfg. Co., 118 M. 636.

Assessor to foot roll.

SEC. 41. (3864) Am. Act 262 of 1899. Before the supervisor or assessing officer shall deliver such roll to the township treasurer or city collector he shall carefully foot the several columns of valuation and taxes, and make a detailed statement thereof, which he shall give the clerk of his township or city, and said clerk shall immediately charge the amount of taxes to the township treasurer or city collector. The clerk of each city and incorporated village shall report to the clerk of their respective counties all taxes levied in their respective cities or villages, and not included in the general tax levy, on or before the first day of October in each year. The county clerk shall, within thirty days after the close of the annual session of the board of supervisors in October in each year, forward to the Auditor General, to be filed in his office, a state-

Duties of township clerk.

City and village clerks to report municipal taxes.

County clerk to report to Auditor General.

ment showing the aggregate valuation of all property as assessed in each assessing precinct within the county during the current year. He shall include in such statement a detail of all taxes to be raised in the county for such year; also the amount of taxes not included in the general tax levy, reported to him by the several city and village clerks as above provided.

Township is not estopped by settlement of township board with treasurer from recovering any balance in his hands and not included in such settlement; as when an excess has been levied and collected and treasurer had only been charged with amount stated in supervisor's warrant.—Boardman v. Flagg, 70 M. 372.

THE TAX ROLL.

Supervisor to annex warrant to tax roll.

SEC. 42. Am. Act 261 of 1897. (3865) The supervisor shall thereupon prepare a copy of the said assessment roll, with the taxes assessed as hereinbefore provided, and annex thereto a warrant signed by him, commanding the township or city treasurer to collect the several sums mentioned in the last column of such roll and to retain in his hands the amount receivable by law into the township treasury for the purposes therein specified, and to pay over to the county treasurer the amounts which shall have been collected for State and county purposes up to and including the tenth day of January next following, within three days thereafter, and the remainder of the amounts therein specified for said purposes, and account in full for all moneys received on or before the first day of March next following; and the said warrant shall authorize and command the treasurer, in case any person named in the assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person. The supervisor may make a new roll and warrant in case of the loss of the one originally given to the township treasurer; the copy of the roll with the warrant annexed, shall be known as "The tax roll."

Township treasurer to pay over State and county taxes.

Distress and sale.

Lost roll.

Tax roll.

When roll has come to assessor from board of supervisors properly certified he has no right unless from defect which renders the whole roll void to refuse to make out the tax roll and attach his warrant thereto. He is required to issue warrant in general form, and cannot notice or except individual cases.—Clark v. Axford, 5 M. 182. Supervisor without any action by electors or township board has no authority to add amounts for township expenses, and tax so levied is void, and may void entire township roll when not distinguishable from valid part.—Lacey v. Davis, 4 M. 140.

A supervisor executing a tax warrant is held to a knowledge of any illegality manifest on the face of the warrant.—Atwell v. Zeluff, 26 M. 118. But where taxes are certified to him in legal form, he performs only a ministerial duty in spreading them upon the roll and affixing his warrant, and in such case cannot be held liable.—Wall v. Trumbull, 16 M. 228. New warrant does not detract from protective force of the process.—Bird v. Perkins, 33 M. 28. Further as to warrant, see Tweed v. Metcalf, 4 M. 579; Wisner v. Davenport, 5 M. 501.

The tax roll is not admissible in evidence to show defective certification of assessment roll, as certificates required to assessment roll are no part of tax roll and not required to be copied thereon.—Hecock v. Van Dusen, 80 M. 359. See also Redding v. Lamb, 81 M. 318.

See Secs. 41, 87 and 99.

Township treasurer's bond.

SEC. 43. (3866) The supervisor of each township on or before the fifteenth day of November in each year, shall notify the township treasurer of the amount of State and county taxes as apportioned to his township, and such treasurer, on or before

the twenty-fifth day of November, shall give to the county treasurer a bond running to the county, in double the amount of State and county taxes, with sufficient sureties, to be approved by the supervisor of the township and the county treasurer, conditioned that he will pay over to the county treasurer as required by law, all State and county taxes which he shall collect during his term of office, and duly and faithfully perform all the other duties of his office. The county treasurer shall file and safely keep such bond in his office, and shall give to the township treasurer a receipt stating that he has received the bond required, which receipt the township treasurer shall deliver to the supervisor on or before the first day of December. The supervisor, after the delivery of such receipt, and on or before the first day of December, shall deliver to the township treasurer the tax roll of his township.

Bond to be approved.

County treasurer to file bond.

Delivery of tax roll.

Township treasurer shall receive all moneys belonging to township.—2353 C. L. '97. Shall give bond.—2354 C. L. '97. Shall keep true account.—2355 C. L. '97. Further as to bond of township treasurer.—2357-63 C. L. '97. Bond by surety company.—5196 e. s. C. L. '97. Sureties to justify.—159-161 C. L. '97. Action on bond.—10050 e. s. C. L. '97. Private suits on official bonds.—9795 C. L. '97. Township treasurer should be a party to his own official bond.—Johnston v. Kimball Township, 39 M. 187. Sureties upon township treasurer's bond for his second term who were not upon his bond for his first term, are not liable for the default of their principal during his first term.—Paw Paw v. Eggleston, 25 M. 36. Sureties upon a city or county treasurer's bond are not liable in an action thereon for moneys not collected nor for moneys lawfully accounted for.—Berrien Co. Treasurer v. Bunbury, 45 M. 79. Filling vacancy in office of township treasurer.—2329 C. L. '97.

As to liability of sureties on official bonds and action thereon see Stevenson v. Bay City, 26 M. 44; Detroit v. Weber, 26 M. 284, 29 M. 24; Perley v. County of Muskegon, 32 M. 132; Johnston v. Kimball Township, 39 M. 187; Detroit v. Houghton, 42 M. 459; Rice v. Sidney Township, 44 M. 37; Berrien County Treasurer v. Bunbury, 45 M. 79; Marquette County v. Ward, 50 M. 174; Township v. Kirsten, 72 M. 1; Village of Evart v. Postal, 86 M. 325; Township of Crystal Lake v. Hill, 109 M. 246; Cheboygan County v. Erratt, 110 M. 156; Village of Allegan v. Chaddock, 6 Det. Leg. News 20; Montmorency Co. v. Putnam, 6 Det. Leg. News 885.

A township treasurer in the collection of the county tax is the agent of the county, and the county has a right of action upon his bond for money so collected and not accounted for, but no right of action against the township for its recovery.—Hart Township v. Oceana Co., 44 M. 417. A treasurer who has received state and county taxes is required to pay the sums received over to the county treasurer in the absence of legal protest from the tax payers and cannot retain it on his claim that the collection was illegal or irregular.—Berrien County Treasurer v. Bunbury, 45 M. 79.

The certificate of equalization by the chairman of the board of supervisors is no part of the assessment roll and need not be copied into the tax roll.—Boyce v. Sebring, 66 M. 210. The tax roll must be an accurate copy of the assessment roll without addition or deduction. Public policy will not permit of any tampering with the assessment roll after it is equalized and completed and certified as required by law and no description can be added or valuation be increased.—Weston v. Monroe, 84 M. 341. The power of the supervisor over the collection (tax) roll terminates when in regular course it has passed into the hands of the treasurer for collection; and any act of his thereafter in altering the roll is not an official one, but private and personal. Where supervisor after roll had been delivered to the treasurer drew a pen across the figures therein and inserted other figures in lieu thereof, held that a seizure of chattels to satisfy the amount set opposite a tax-payer's name, which had been thus changed is not justifiable; and is immaterial that by the change the amount was made less instead of greater. It is essential that the collection (tax) roll and the original (assessment roll) on file in the supervisor's office should correspond; and no lawful change can be made in the former unless sanctioned by the state of the latter, or so as to cause a substantial variance between the two.—Ferton v. Feller, 33 M. 199. Supervisors cannot bring their work to a successful completion until they have affixed to the tax roll a good and sufficient warrant. An unsigned and undated warrant is invalid.—Westbrook v. Miller, 64 M. 129.

During successive years there have been many changes in the form of warrant issued to supervisors and other assessors, and for this reason no form of warrant should be used except that last issued by the Auditor General or a form in full accord therewith.

Collector is not responsible beyond the amount of taxes actually received by him for the moneys called for by a tax roll to which no warrant is attached empowering him to enforce payment. He must have in his hands

the statutory means for collection before he can be in default for not collecting.—Weimer v. Bunbury, 30 M. 201. Time for delivery of warrant is directory.—Cooley on Taxation 428.

OF THE COLLECTING OF TAXES.

Township treasurer to collect taxes.

Treasurer's office.

Proviso.

Collection fees.

In case of apprehension of loss.

Liability of tenant.

Collector to notify tenant.

SEC. 44. (3867) On receiving such tax roll, the township treasurer or other collector shall proceed to collect such taxes. The township treasurer shall remain in his office at some convenient place in his township, village or city on every Friday in the month of December thereafter, from nine o'clock a. m. to five o'clock p. m., to receive taxes: *Provided, however,* That he shall receive taxes upon any week day when they may be offered, and on all sums voluntarily paid before the tenth day of January of the succeeding year, he shall add one per cent for collection fees, and upon all taxes paid on or after said tenth day of January he shall add four per cent. In case he may be apprehensive of the loss of any personal tax assessed upon his roll, he may proceed to enforce its collection at any time, and if compelled to seize property or bring suit in December, may add four per cent for collection fees, and when taxes are assessed on property occupied by tenant or tenants paying rental therefor, and he is assessed as occupant of said premises, the said tenant or tenants shall be liable for the taxes assessed on said property after the time said tax roll is delivered to the township treasurer or other collecting officer for the year, but not for more of the same than the amount of the rental may be while said tax roll is in his hands and which becomes due to the owner during such period, and may be collected in the same manner as provided for collecting the same from persons owning and occupying their own property; and said collecting officer shall notify all such persons occupying rented property, or so far as he may know of the same, as soon as the tax roll is delivered to him, by written notice, and shall note said notice and the date thereof against the description of said property on the roll.

Duty of woman endowed with lands to pay taxes thereon.—Rea v. Rea, 63 M. 268. Discharge of insolvent debtor does not discharge taxes.—9644 C. L. '97. The claim for personal tax stands no better or other chance against the estate of an insolvent than the claim of an individual.—Lyon v. Receiver of Taxes, 52 M. 276. Trustee to whom conveyance has been made of stock of goods, book accounts, etc., and who agrees to pay creditors as moneys are received, held to have properly paid taxes upon the stock of goods.—Tanner v. Page, 106 M. 155. Collection of taxes against bridge company.—6638 C. L. '97.

Where lands are occupied and assessed to owner or occupant it becomes a duty which the person assessed owes to the State to make payment.—Blackwood v. Van Vliet, 30 M. 118. Tenant is abundantly protected by being allowed to pay the taxes and set them off against his rent. But may not, as against ground rental, off-set taxes levied on property tenant has himself added to the realty.—Williams v. Towl, 65 M. 204. See Sub. 11, Sec. 8. Taxes paid in advance of the time payment can be enforced are voluntary payments, and cannot be recovered without statutory permission.—Cox v. Welcher, 68 M. 263.

Collector has no right to receive in payment of tax a draft of his creditor upon himself. Taxes are due not to him, but to the public, and claims against him are not a legal tender for or off-set against taxes.—Elliott v. Miller, 8 M. 132. Treasurer has no authority to receive note in payment of taxes and township will not be bound thereby, but collection of the tax may be enforced at any time during life of treasurer's warrant.—Turnbull v. Township of Alpena, 74 M. 621. While treasurer may not accept note in payment of taxes he violates no public trust if he makes a loan of his private funds and applies the loan in payment of the borrower's taxes.—Hatch v. Reid, 112 M. 430. Not competent for township treasurer to receive saw-

logs in payment of taxes and bind the township by so doing.—People v. Seeley, 117 M. 263. If he receives anything except what the law authorizes him to receive and receipts for the taxes he must make good the amount.—Jones v. Wright, 34 M. 371.

Whenever any check or bank draft shall be tendered in payment of any debt, taxes or other obligation due to the state or to any municipality therein, such check or draft shall operate as a payment made on the date said check or draft was received and accepted by the receiving officer, if it shall be paid on presentation without deduction for exchange or cost of collection: Provided, however, that no receiving officer shall be required to receive in payment of any debt, taxes or other obligation collectable or receivable by him any tender other than gold or silver coin of the United States, United States treasury notes, gold certificates, silver certificates or national bank notes.—1179 C. L. '97, Am. Act 228, 1899. Draft or check should be presented for payment within a reasonable time. No delay is reasonable beyond that which may be fairly required in the ordinary course of business without special inconvenience to the holder, or by the special circumstances of the case.—Phenix Insurance Co. v. Gray, 13 M. 191.

County and township treasurers required to pay into state and county treasuries, as the case may be, the same description of funds which they shall have received.—1199 C. L. '97.

INJUNCTION TO RESTRAIN WASTE: When any person, company or corporation shall neglect or refuse to pay any tax assessed on the lands of such person, company or corporation within the time specified by law, the township treasurer shall be entitled to an injunction to restrain waste on any of such lands upon which the taxes shall remain unpaid when it shall appear that such lands are chiefly valuable for the timber being, standing or growing thereon. And any circuit judge or circuit court commissioner of the county in which such lands are situated may, on the application of such township treasurer, make an order restraining any person from committing waste thereon.—3979 C. L. '97. Act applies only to wild lands and treasurer is made agent of the State to commence suit, which cannot be done until the expiration of the time specified by law for the payment of the taxes.—Caldwell v. Ward, 83 M. 13. But a bill may be filed upon refusal of payment at any time after the taxes can be lawfully demanded even before return of tax roll; but the refusal must have been positive and unequivocal to pay the whole or some part of the tax.—Caldwell v. Ward, 88 M. 378. Not intended that the imperative mandate of the statute should be defeated by affidavit that tax could be collected by other process or that owner did not intend to commit waste within given period or that if he should cut timber intended to there would be enough value left to pay the taxes. Where township tax alone claimed illegal there can be no hardship in injunction, as this tax can be paid under protest and rights preserved thereby.—Rossman v. Adams, 91 M. 69. Cutting of timber not for purposes of husbandry and in denial of rights of complainant in bill filed to restrain commission of waste on the land constitutes waste and is sufficient in itself in the absence of denial to justify the inference that defendant is liable to continue to commit waste and to authorize injunction.—Webster v. Peet, 97 M. 326. In Rossman v. Adams, Mich. Mandamus Cases, 807, writ was granted to compel circuit court commissioner to grant injunction.

See Secs. 100, 117.

SEC. 45. (3868) All taxes shall be collected by the several township and city treasurers or collectors, before the first day of March, in each year. Collection to be before March 1.

Supersedes provision of Sub. 12, Sec. 2484 C. L. '97, for extension of time for collection.

The Wayne county treasurer collects state and county taxes assessed in the city of Detroit, instead of the city treasurer.—Act 378, Local Acts of 1879.

Township and city treasurers or collectors have no authority to collect taxes after the expiration of their warrants, and receipts given by them for taxes thereafter cannot be considered as evidence of payment.

SEC. 46. (3869) For the purpose of collecting the taxes remaining unpaid on the tenth day of January, the said treasurer shall, thereafter during that month, call personally upon each person liable to pay such taxes, if a resident of such township, or at his usual place of residence or business therein, and demand payment of the taxes charged against him. If such person is not a resident of the township, but resides within the county, or an adjoining county, and his residence is known to the treasurer, he shall make such demand either personally or by mail. In cases of companies or corporations demand may be made at the principal or other office of such company or Personal demand. Demand on companies.

Charter provisions.

Demand by mail.

Receipt and entry.

Tax on bank shares

corporation, or by mail directed to such corporation or company, or its principal officer at its usual place of business. In cities where some special provision is made for demand or collection of taxes, the collector or treasurer shall comply with such special provision, otherwise be bound by the provisions of this act. If demand is sent by mail, the amount of the tax shall be stated and the place and time where and when it may be paid. He shall give a receipt for every tax paid, and shall enter in ink the fact of payment, and the date thereof upon his tax roll. In case of taxes assessed upon the shares of the capital stock of any bank he shall call upon the cashier of such bank and demand payment thereof, and thereupon it shall be the duty of such cashier to pay the same, and charge the amount so paid against the shares of stock so taxed.

Demand by mail, proof of.—Clark v. Adams, 33 M. 159. Question of demand under this section and of collection from personal property are foreclosed by decree.—Hughes v. Jordan, 118 M. 27; Hooker v. Bond, 118 M. 255; Shefferly v. Auditor General, 6 Det. Leg. News 240.

Collector's receipt for taxes is an official paper and evidence of the payment of the tax in suits between third parties.—Johnstone v. Scott, 11 M. 232. Stub receipt books are public records.—Burton v. Tuite, 78 M. 363; 80 M. 218. The lawful acts of a defacto tax collector as such are valid whether he was strictly entitled to the tax roll or not.—Stockle v. Silsbee, 41 M. 615. The payment of taxes may be proved by parol. Although the receipt may be used as primary evidence this does not preclude other proof.—Hammond v. Hannin, 21 M. 374.

Where a city charter provides for the collection of personal taxes by process from the receiver of taxes and by levy upon personal property, an action by the city for such taxes will not lie except as specially provided for.—Detroit v. Jepp, 52 M. 458. Legislature shall restrict power of taxation of cities and villages.—Sec. 13, Art. XV, Const.

It is the duty of an executor to pay the taxes upon real estate of the decedent in his possession pending the settlement of the estate; and where available funds are insufficient he may obtain from probate court authority to raise money by mortgaging the property.—Long v. Landman, 118 M. 174. Taxes levied on mining or manufacturing companies whose charters have expired shall be paid out of the assets by the receiver.—7099 C. L. '97.

As between vendor and purchaser under a warranty deed the obligation is upon the vendee to pay the taxes for the current year where the conveyance was prior to December 1st, and upon the vendor when it was subsequent.—Harrington v. Hilliard, 27 M. 271. Where grantee voluntarily pays tax which was a lien upon land when he received his deed and brings suit on covenant against incumbrances, grantor may show as a complete defense the invalidity of the tax.—Balfour v. Whitman, 89 M. 202.

Where treasurer receives from tax-payer worthless highway orders in part payment, receipting the taxes and returning them as paid, the taxes are thereby paid, and any suit brought for the amount of the order must be a private controversy between the treasurer and the party who paid them to him.—Staley v. Columbus, 36 M. 38.

VOLUNTARY PAYMENT: Where any person shall voluntarily and without protest pay to the officer demanding the same and having process for the collection thereof, any sum purporting by such process to be payable by such person for taxes assessed by virtue of any law of this State, neither the officer so collecting nor the officer who issued process nor the officer who made the assessment shall in consequence of such payment be liable in any action on account of any defect or invalidity in the law under which the proceedings are had, or of any defect or irregularities in the said proceedings or in such warrant or process.—3982 C. L. '97. Acquiescence in an assessment and payment of the tax estops the tax-payer from afterwards complaining of it.—Wattles v. Lapeer, 40 M. 624. A purchaser from one whose land has been irregularly assessed is not obliged to pay the tax on account of his vendor nor is he personally liable to seizure of his goods for failure to pay; but if he pays without making known his objections to the proper auditing body before the amount becomes a lien on the land, the payment must be considered voluntary.—Louden v. East Saginaw, 41 M. 18. See also Attorney General v. Burrell, 31 M. 24. Taxes subsequently paid by the holder of a void tax title are voluntary payments and cannot be recovered from the owner of the lands.—Croskery v. Busch, 116 M. 288.

Payment before officer has authority to enforce collection is voluntary.—Peninsula Iron Co. v. Crystal Falls, 60 M. 79. Money voluntarily paid in the reasonable belief that it is due and after investigation or the opportunity therefor and without fraud on the part of the recipient cannot be recovered as paid under misapprehension.—Wheeler v. Hathaway, 58 M. 77.

INVOLUNTARY PAYMENT: Payment to a public officer in compliance with a demand accompanied by a threat of immediate and actual enforce-

ment is in no sense a voluntary payment; and when the claim is unlawful and made under color of office an action lies for its recovery.—First National Bank of Sturgis v. Watkins, 21 M. 483. Action for money had and received will lie against the city to recover money involuntarily paid upon an illegal assessment where the city has failed by the irregularity of its proceedings to obtain any jurisdiction over the subject matter of the assessment. Payment made upon an illegal assessment under threat of immediate seizure and sale of the property to satisfy the same is not voluntary.—Nickodemus v. City of East Saginaw, 25 M. 456. Payment made on the demand of an officer under legal process is not voluntary although made before any levy. A party is not bound to await an arrest or seizure, but may assume that the officer will execute the process on which he made demand.—First National Bank of Sturgis v. Watkins, 21 M. 483. See also McKee v. Campbell, 27 M. 497. No protest is necessary in such case to authorize an action to recover back the money illegally demanded; but where payment is made without protest no interest can be claimed until after demand or suit.—Atwell v. Zeluff, 26 M. 118. Payment of a personal tax under protest and to avoid the immediate seizure of goods is not a voluntary payment and suit can be brought against the collector to recover it while it is in his hands.—Lyon v. Receiver of Taxes, 52 M. 271. The attempt to compel payment when there is no legal burden is regarded as a legal injury, and payment made to avoid the seizure and sale of property to pay the wrongful claim can be recovered as an extorted sum for which there was no consideration.—Specific protest is not required where payment is involuntary and made under legal duress.—Cox v. Welcher, 68 M. 263. Demand of payment by an officer having a warrant involves an implication that payment will be enforced if not made, and the authorities do not require an actual levy or proof that a levy could be made on tangible property. If the party yields to the legal menace it cannot be presumed in favor of the exactor of payment that he could have found nothing to levy on or that there was no means of enforcement.—Babcock v. Township of Beaver Creek, 64 M. 601.

As between mortgagees, payment of taxes to protect the several interests could not be considered a voluntary payment, as it inures to the benefit of the first mortgagee.—Weadock v. Noeker, 6 Det. Leg. News 5; Weadock v. Giff, 6 Det. Leg. News 6.

PAYMENT BY CASHIER: Mandamus will not lie to compel bank cashier to pay taxes assessed against stockholders, the remedy provided by the act for the collection of such taxes being clear and specific.—Eyke v. Lange, 90 M. 592; 104 M. 26. Section imposes upon bank cashier an official and not a personal duty. Upon demand it is duty of bank to pay the tax, and if performance must be enforced at law, suit should be brought against bank and not against cashier.—Muskegon v. Lange, 104 M. 19. Where personal property is sold or mortgaged for its full value before personal taxes thereon become a lien thereon the tax cannot be collected of the purchaser or mortgagee. In case of bank stock collection cannot be made of the bank as it could not reimburse itself against the stock, which was not after the sale the property of the person assessed and liable for the tax. Suit to enjoin collection from bank not necessary as the facts can be interposed as a defense in any action to collect of the bank.—St. Johns National Bank v. Bingham Township, 113 M. 203.

See Sec. 53.

SEC. 47. Am. Act 229 of 1895. (3870) Am. Act 215 of 1899. If any person, firm or corporation shall neglect or refuse to pay any tax assessed to him or them, the township or city treasurer, as the case may be, shall collect the same by seizing the personal property of such person, firm or corporation, to an amount sufficient to pay such tax, fees and charges for subsequent sale, wherever the same may be found in the State, and from which seizure no property shall be exempt. He may sell the property seized to an amount sufficient to pay the taxes and all charges, in the place where seized, or in the township or city of which he is treasurer, at public auction, on giving public notice of the same at least five days previous to the sale, by posting written or printed notices in three public places in the township, village or city where the sale is to be made, which sale may be adjourned from time to time if he shall deem the same necessary; and in case property shall be seized and advertised as herein directed, during the life of the warrant, the sale may take place at any time within six days after the expiration thereof. If it becomes necessary to sell personal property which brings more than the amount of taxes

Seizure of personal property for taxes.

Sale of property seized.

Notice of sale.

Surplus proceeds.

and charges, the balance shall be returned to the person, firm or corporation from whose possession the property was taken, except as hereinafter provided. If the property so distrained cannot be sold for want of bidders, and in such cases only, the treasurer shall return a statement of the fact, and such tax shall be returned as unpaid. The township treasurer, if otherwise unable to collect a tax on personal property, may sue the person, firm or corporation to whom it is assessed, in the name of the township, village or city, and garnishee any debtor or debtors of such person, firm or corporation. The tax roll shall be prima facie evidence of the debt sought to be recovered: *Provided*, That when any person having possession of the personal property of any other person, firm or corporation shall be assessed for such property and shall be obliged to pay the taxes thereon, such person, firm or corporation so paying the taxes, may recover of the person, firm or corporation for whose benefit the taxes were paid, the money so paid, with the interest thereon, in an action of assumpsit: *Provided further*, That in case where levy is made, as hereinbefore provided, for taxes assessed upon land, the levy shall be released if, within ten days after it is made, the persons having the title to said land shall deliver to the Commissioner of the State Land Office a deed conveying the land to the State as to an individual, free from all mortgages or liens whatsoever, and in such case the taxes thereon shall be returned as in the case of other taxes unpaid upon lands, and the Auditor General shall charge back to the county all local taxes on said land and shall cancel the State taxes thereon; and in case land is so deeded to the State it shall thereafter be subject to all the provisions of law governing lands deeded to the State by the Auditor General under the provisions of section one hundred twenty-seven of act two hundred six of eighteen hundred ninety-three as amended: *Provided further*, That in case the land is deeded to the State as herein provided the Board of State Auditors shall audit and allow the actual expenses of the township treasurer incurred in making the levy on said land and compensation therefor at two dollars per day, the account therefor to be certified by the Commissioner of the State Land Office, and the amount thereof shall be paid out of the general fund of the State.

Return of unpaid taxes.

Collection by suit.

Tax roll evidence of debt.

Proviso.

Levy for taxes on land. Conditions of release.

Land deeded to State.

Expense, how paid.

Levy on crops.—10321 C. L. '97; sale of.—10327 C. L. '97. Levy on shares.—10335-7 C. L. '97. See Newberry v. D. & L. S. Iron Co., 17 M. 141. Sale of perishables.—10360 C. L. '97. Resisting officer.—11327 C. L. '97. As to the application of 10318 C. L. '97 to a levy on property upon which there is a chattel mortgage in view of the provision of this section that no property shall be exempt from seizure for taxes—quere.

Levy cannot be made after return day.—Blair v. Compton, 33 M. 424. Where lands are assessed as non-resident ("or owner unknown") collector has no authority to levy upon any property to satisfy a tax so assessed.—Tweed v. Metcalf, 4 M. 579. An officer's release of a levy discharges it.—Weber v. Henry, 16 M. 399. A levy effected by committing a trespass is bad.—Bailey v. Wright, 39 M. 98. The power of the township treasurer to collect the taxes or to sue therefor is confined to the time the warrant is in force.—Putnam v. Township of Fife Lake, 45 M. 125. A levy upon personal property for collection of a tax is prima facie a satisfaction of the tax.—Henry v. Gregory, 29 M. 68. See Farmers & Mechanics' Bank v. Kingsley, 2 Douglass, 379. Growing crops are a part of the realty, but for the purpose of levy and sale on execution are treated as personalty.—Preston v. Ryan, 45 M. 174.

The tax roll is itself as complete and adequate as an execution on a judgment would be if there are goods and chattels within the treasurer's jurisdic-

tion.—Staley v. Columbus, 36 M. 38. Same rule must be applied to sale by town treasurer to satisfy tax as to judicial sales. So held where two horses not matched and either of which was worth more than the tax, were sold together and not offered separately.—Leaton v. Murphy, 78 M. 77. Exemption from execution under 10322 C. L. '97 does not release property from liability to seizure and sale for taxes for which its owner is liable.

No property of the person liable for a tax is exempt from seizure and sale for taxes. If the provisions of this section were fully observed by collecting officers there would be much less unpaid taxes returned.

Where the supervisor's warrant is fair on its face township treasurer is not personally liable for enforcing the collection of an excessive tax.—Byles v. Genung, 52 M. 504. But warrant goes only to the extent of protecting him from personal liability as trespasser or wrong-doer.—LeRoy v. East Saginaw City Railway, 18 M. 233. Collector is protected by process that is fair on its face against irregularities except his own.—Bird v. Perkins, 33 M. 28. A tax assessment is in the nature of a judgment and cannot be assailed for fraud or irregularity in a suit against an officer who holds process fair on its face for enforcing a tax based upon it.—Moss v. Cummings, 44 M. 359. Collector not liable in trover for property seized under tax roll and warrant fair upon their face; but roll and warrant are not fair on their face when for a tax levied under an invalid law.—Mogg v. Hall, 83 M. 576. Collector is not liable for value of chattels seized for taxes under warrant fair on face even though demand for return thereof be made before sale.—Curtiss v. Witt, 110 M. 131. A warrant addressed to the "treasurer of the township of ....." signed by the supervisor of St. Joseph township and annexed to the tax roll of that township is not fatally defective.—First National Bank of St. Joseph v. Township of St. Joseph, 46 M. 528; Auditor General v. Stiles, 83 M. 460. Further as to warrant see Clark v. Axford, 5 M. 182.

A law prescribing who shall be liable for the payment of taxes and whose property may be levied on therefor impliedly forbids the collector to seize the property of others or by act or omission make the tax a charge on it, and the owner is at liberty to buy and sell in reliance on the officer's implied duty toward him, and to understand that the latter is not protected by his commission unless he keeps within the powers given by it.—Raynesford v. Phelps, 43 M. 342. A mere sale of another's hay in the mow under a tax warrant does not amount to a conversion where the owner did not acquiesce and his possession was not disturbed. A sale of a growing crop might be different.—Mills v. Van Camp, 41 M. 645. Assessment to firm which has been succeeded by corporation is valid against the corporation and it may be enforced as such.—Petrie Lumber Co. v. Collins, 66 M. 64. Taxes paid under protest after seizure of property, collector's warrant having expired before seizure, may be recovered.—Phillips v. New Buffalo, 68 M. 217. A note taken by a township treasurer in his own name on the sale of property for taxes is void in his hands on the ground of public policy.—Chapman v. Remington, 80 M. 552. After levy and agreement with city authorities, check for amount was deposited with city treasurer and amicable suit instituted. Held, payment was involuntary.—Gebhart v. East Saginaw, 40 M. 336.

Treasurer seized personal property belonging to plaintiffs to satisfy taxes levied upon real estate not owned by nor listed to them, which they paid under verbal protest to secure a release of their property and brought suit against township to recover, prior to which treasurer had paid State and county taxes to county treasurer. Held, payment was involuntary; that treasurer's action was not an attempt to collect an illegal tax assessed against plaintiff's property or against them personally, nor did his warrant direct or authorize him to demand or enforce collection against them; that the taxes were not assessed to them or against their property and they had no occasion to appear before town board in relation thereto nor to deliver to treasurer statutory protest; that the township by its officers coerced payment without any claim against plaintiffs or their land, and without even color of authority to take plaintiff's money, and that the fact of payment to the county treasurer of the State and county taxes thus collected was immaterial to the issue; that the section providing for bringing suit within thirty days after payment of tax under protest does not apply to this case, and the defendant stands in no more favorable position than if it had received plaintiff's money under a threat to take or sell their property under pretense of legal authority so to do without any assessment roll or warrant whatever.—Babcock v. Township of Beaver Creek, 65 M. 479. Township is liable in action of assumpsit to recover back money illegally collected by the treasurer in his official capacity for taxes illegally assessed.—Daniels v. Watertown, 55 M. 376.

Personal property of a railroad is liable to seizure and sale for unpaid taxes and the company's coal supply is not exempt as a part of the entirety. "Person" includes bodies corporate and politic.—C. & N. W. Ry. Co. v. Ellson, 113 M. 30. Where personal property has been levied upon to satisfy tax on bank stock which is claimed to be illegal and void the remedy at law is adequate. An action of trover for the value of the property seized would raise the question or complainant might pay the amount of the tax under protest and test its validity in an action to recover back the amount paid.—Hagenbuch v. Howard, 34 M. 1; see also Mears v. Howarth, 34 M. 19. Where land was assessed to one corporation the action of township treasurer in seizing property of another corporation who owned the property assessed held lawful (corporation known by both names).—Iron Star Co. v. Wehse, 117 M. 487. Goods assigned for benefit of creditors are exempt from seizure to satisfy taxes against the assignor.—Lyon v. Receiver of Taxes,

52 M. 271. But the assignment must have been made before the first day of December in the year of assessment; see Sec. 40.

Where one, on the day fixed for the sale of his property for taxes, sent his representative to attend the sale, who, without protest, took part in the bidding and upon the property being sold to him informed the treasurer that if he would go to the office of the owner in another township he would receive the amount of the bid, such owner could not, after paying the treasurer as agreed, but under protest, claim that the payment was involuntary and maintain an action to recover the amount so paid.—Loud & Sons Lumber Co. v. Township of Vienna, 6 Det. Leg. News 165.

REPLEVIN: No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, etc.—748, 10651 C. L. '97, does not apply where property seized belongs to one having no relation to the tax assessed.—Travers v. Inslee, 19 M. 98. Nor where there could have been no valid tax levied.—LeRoy v. East Saginaw City Railway, 18 M. 233. Nor where there was no jurisdiction to levy the tax.—McCoy v. Anderson, 47 M. 502. But the mere fact that the tax is invalid is not sufficient to authorize replevin.—Hill v. Wright, 49 M. 230. Prohibition applies only where valid tax might have been imposed.—LeRoy v. East Saginaw City Railway, 18 M. 233. Applies only to cases where the property seized is that of the person or of one in privity with the person against whom the tax was assessed.—Travers v. Inslee, 19 M. 98.

Replevin will not lie for property seized by virtue of a writ, fair on its face, when it appears that the property seized is subject to seizure on such process if valid.—Northwestern Cooperage and Lumber Co. v. Scott, 6 Det. Leg. News 1055.

Property being rightfully assessed, replevin will not lie.—Hood v. Judkins, 61 M. 575. But lies for property seized to satisfy a void tax.—Boyce v. Cutter, 70 M. 539. Does not preclude replevin by one who is a stranger to the tax and not in privity with the person assessed. Purchaser of personal property before lien for taxes assessed thereon has attached is not in privity with the vendor so as to prevent his bringing replevin against the collector who has seized the property for such taxes.—Tousey v. Post, 91 M. 631. Replevin of property seized to satisfy a void tax is proper remedy.—Lantis v. Reithmiller, 95 M. 45.

Where a tax levy inflicts an injury cognizable by law, the injured party must seek redress otherwise than by an action of replevin for property seized for the tax. The statutory provision against bringing replevin in case of seizure for taxes cannot be defeated by a mere claim that the tax is invalid if it is apparently regular; and where replevin is brought it is proper on quashing the writ to give judgment for defendant for the amount of the tax lien.—Hill v. Wright, 49 M. 229. Replevin will not lie for saw logs seized to satisfy taxes assessed in town where logs were liable for assessment, which assessment appears to be regular and valid.—Hill v. Graham, 72 M. 529.

Replevin will not lie where tax roll and warrant appear regular upon their face.—West Michigan Lumber Co. v. Dean, 73 M. 459; Thaver Lumber Co. v. Dean, 73 M. 463; Boyce v. Peterson, 84 M. 490; Fletcher v. Post, 104 M. 424; Forster v. Brown, 5 Det. Leg. News 722. Even though claimed to be held by virtue of a county treasurer's warrant, the issuance of which was upon an insufficient return by a township treasurer.—Boyce v. Stevens, 86 M. 549. The vendee in a bill of sale made without consideration and for the express purpose of defeating the collection of taxes upon the goods which remained in the possession of the vendor cannot maintain replevin for the property described in such bill and which is seized for taxes.—Gray v. Finn, 96 M. 62. Replevin will not lie for the recovery of property seized for a tax assessed upon a piece of unoccupied land which was assessed in one parcel to the owner of the record title, a part thereof having been transferred to a son by an unrecorded deed, the property seized belonging to the father.—Scott v. Wheland, 96 M. 624. Regularity of proceeding anterior to a warrant cannot be determined by trover or replevin.—Curtiss v. Witt, 110 M. 131. Validity of tax levied in pursuance of law cannot be tested in replevin.—Roberts v. Denio, 118 M. 544. One in rightful possession of personal property as lessee can maintain replevin in case such property is seized to satisfy taxes assessed against the lessor.—Whittaker v. Fuller, 96 M. 141. Husband may maintain replevin against an officer for wife's clothing purchased with his money or upon his credit and seized upon a tax warrant for taxes assessed against wife's separate property.—Smith v. Abair, 87 M. 62.

SUIT: Indebitatus assumpsit is the proper form in which township treasurer may bring suit in the name of the township for taxes, the count explaining the subject matter of the debt; but a special declaration is not requisite.—Putnam v. Township of Fife Lake, 45 M. 125. In suit for collection of taxes on personal property collector may testify to the fact and time of making his return. The production and identification of the tax roll and of the assessment and levy of such a tax thereon against defendant makes a prima facie case. In suit based upon county treasurer's warrant, collector must show that he made verified return of unpaid personal property taxes.—Muskegon v. Martin Lumber Co., 86 M. 625. Collector may sue for taxes on personal property, but as to real property the remedy as provided by statute must be resorted to.—Sturgis v. Flanders, 97 M. 546.

Treasurer has no authority to bring suit after his original or supplemental warrant has expired. Suit can only be resorted to when person assessed has no property that can be reached under the warrant or when he resides beyond the treasurer's jurisdiction.—Port Huron v. Potts, 78 M. 435. Personal tax assessed to executors may be recovered in an action against executor

though he has distributed the estate since the assessment.—Orion Township v. Axford, 112 M. 179. Judgment for personal tax may include interest from time it became due and payable. Tax collector called upon delinquent tax payer after the expiration of his warrant for the tax assessed upon personal property which he promised to pay. Held to be a sufficient demand of payment to warrant commencement of suit for its collection after its return to the county treasurer and the issuance of a new warrant which was still in force and which suit is not prematurely brought. —Grand Rapids v. Welleman, 85 M. 234. Mandamus will not be granted to enforce collection of taxes denying a motion to quash based upon the merits and accompanied by a stipulation of facts.—Martin Lumber Co. v. Menominee Circuit Judge, 116 M. 354. Action for delinquent personal taxes will not lie except against the person assessed.—Township of Laketon v. Akeley, 74 M. 695.

See Secs. 40, 48, 49.

Collector's fee for sale.

SEC. 48. (3871) In case of a distress and sale of goods and chattels, for the payment of any tax, the treasurer or other collecting officer may also collect on such sale one dollar and fifty cents over and above the tax, as his fees for making such sale, which fees and percentage hereinbefore provided shall be in full for his services in collecting such taxes; and in case payment of such tax shall be made after the distress and before the sale, it shall be lawful for such treasurer or collecting officer to require the payment of one dollar and fifty cents as his fee for making such distress, and to enforce payment of the same, if need be, by making sale notwithstanding the tax shall have been paid. And whenever any personal property having been assessed to any person in any township or ward in this State shall be removed therefrom before the taxes assessed thereon shall be collected, and there being no other personal property sufficient in said township or ward whereon the treasurer or other collecting officer can levy and collect said taxes, or any of them, he shall have full power, and it shall be his duty to make a statement, duly certified by him to be correct and true, showing that personal property has been assessed to such person, naming him, the valuation thereof, the various taxes thereon, and the total thereof, as appears from the roll in the hands of such treasurer, and that such property has been removed from such township, ward or city since the assessment thereof, and that the taxes or some portion of them has not been paid; which statement shall be witnessed and acknowledged in the same manner as deeds of real estate are acknowledged, and shall be received in all courts and other places as evidence of the facts therein contained, without proof of its execution, and shall be *prima facie* evidence of the validity of the tax therein named against the person therein named, and shall be full and ample authority to the treasurer or other tax collector to whom it shall be sent to levy and collect the same in the same manner as other personal taxes are collected by him when spread upon his own roll. Such statement may be sent to the township or city treasurer, or other collecting officer of any township or city in this State, where the person against whom such assessment was made may have property, and the treasurer, or other collecting officer to whom such statement shall have been transmitted, shall, upon the receipt of the same, proceed to collect said taxes out of any property belonging to the owner of such property so taxed as aforesaid, within

Sale for fee.

Collection of taxes on personal property removed.

Valid statement of taxes on personal property removed.

Collection where found.

his jurisdiction, liable to be seized for taxes, together with double collection fees therefor, and the further sum of twenty-five cents to defray the expense of transmitting the taxes so collected as hereinafter provided, and shall give his receipt therefor. The said treasurer, or other collecting officer, shall thereupon transmit the taxes, and one-half of the collection fees as aforesaid collected, to the township treasurer, or other collecting officer, from whom he received such statement, and the latter shall, upon the receipt of said taxes and collection fees, mark the said taxes in ink as paid upon his tax roll, and the date of the receipt of the same, retaining the collection fees so received as aforesaid, as his fees in the matter of the collection of said taxes. Executions issued upon judgments rendered for any tax, may be levied upon any property, without exemption, the same as though seized for sale under warrants issued for the collection of taxes by township supervisors, and collected in the same manner, in all other respects, as provided by law for the collection of judgments.

Fees.

Accounting.

Levy of execution.

Claim for surplus of sale.

SEC. 49. (3872) Whenever a surplus arising from the sale of any property distrained for taxes, shall be claimed by any other than the person for whose tax such property was sold, and such claim shall be contested, either of the contestants may prosecute an action against the other, as for money had and received, and in such action the rights of the parties to such surplus shall be determined. For the purpose of such action the defendant shall be deemed to be in possession of the surplus in the hands of the treasurer, and upon the presentation to said treasurer of a certified copy of the final judgment rendered in such action he shall pay over the same to the party recovering such judgment, and no such treasurer shall be liable to any claimant of such surplus, the right to which is contested as provided in this act, until he shall have refused to pay over such surplus upon the production of a certified copy of the judgment as aforesaid. In any action brought pursuant to this section no other case shall be joined, nor shall any set off be allowed, and if an execution issue on a judgment so rendered, it shall direct the costs only of such action to be levied by virtue thereof.

Defendant deemed in possession.

Treasurer not liable.

Rule in action.

Disability of township treasurer.

Township board to appoint.

SEC. 50. (3873) In case any township treasurer shall neglect to give either of the bonds required, or shall die, resign or remove out of the township or become unable to discharge the duties of his office, the township board shall forthwith appoint a new treasurer, who, on giving the required bonds, shall execute the duties of the office for the remainder of the year and until his successor is elected and qualified. The township clerk shall immediately notify the county treasurer of such appointment.

See Sec. 43.

Sheriff to collect in certain cases.

SEC. 51. (3874) In case the township treasurer shall neglect or refuse to file his bond with the county treasurer, in the manner and within the time prescribed by law, and the town-

ship board shall fail to appoint a treasurer who shall give such bond, and deliver a receipt for the same to the supervisor by the tenth day of December, the supervisor shall deliver the tax roll with the necessary warrant directed to the sheriff of the county, who shall, before he receives said tax roll, execute and deliver like bonds required of the township treasurer, and make like collections and returns, and shall be entitled to the same compensation on all taxes collected by him by virtue of such warrant as is allowed to the township treasurer, and for the purpose of collecting the same, shall be vested with all the powers conferred upon the township treasurer, and suit may be brought on such sheriff's bond under the same circumstances as on those of a township treasurer. Bonds. Compensation. Powers.

The collection of taxes by the sheriff being a duty foreign to his position invests him with a new office not within the contemplation of sureties on his official bond as sheriff.—White v. East Saginaw, 43 M. 567.

SEC. 52. (3875) In case the township treasurer shall not collect the full amount of taxes required by his warrant to be paid into the township treasury, such portion thereof as he shall collect shall be retained by him to be paid out for the following purposes: The amount of school taxes collected to be paid on the order of the school district officers, the amount collected for general township purposes to be paid on the order of the township board, the amount collected for highway purposes to be paid on the order of the commissioner of highways countersigned by the township clerk or supervisor, and the amount collected for any special fund to be paid on the order of the proper officer, but in no case shall the amounts collected for any one fund be paid on the orders drawn on any other fund. When collection incomplete. Amount collected, how disbursed.

Township clerk to keep separate account with each fund.—2338 C. L. '97. Where a tax payment is expressly made to satisfy a particular assessment, the collector if he receives it, must apply the money to the purpose specified and no other.—Fuller v. Grand Rapids, 40 M. 395.

SEC. 53. (3876) Any one may pay the taxes or any one of the several taxes or any part thereof on any parcel of land and the treasurer shall note across the face of the receipt in ink, any portion of the taxes remaining unpaid. He may pay any tax, whether levied on personal or real property, under protest to the treasurer, specifying at the time in writing, signed by him, the grounds of such protest, and such treasurer shall minute the fact of such protest on the tax roll and in the receipt given. The person paying under such protest may, within thirty days and not afterwards, sue the township for the amount paid, and recover, if the tax is shown to be illegal for the reason specified in such protest. Any person owning an undivided share, or other part or parcel of real property assessed in one description, may pay on the part thus owned by paying an amount having the same relation to the whole tax as the part on which payment is made has to the whole parcel. The person making such payment shall accurately describe the part or share on which he makes payment, and the receipt given and the record of the receiving officer shall show such description, and by Partial payment. Payment under protest. Payment of tax on undivided share.

whom paid; and in case of the sale of the remaining part or share for non-payment of taxes, he may purchase the same in like manner as any disinterested person could. Any person having a lien on property may, after thirty days from the time the tax is payable, pay the taxes thereon, and the same may be added to his lien and recovered with the rate of interest borne by the lien. A tenant of real estate may pay the taxes thereon and deduct the same from his rent, unless there be an agreement to the contrary. Such payment may be made to the township treasurer while the tax roll is in his hands, or afterwards to the county treasurer. The receipt given shall be evidence of such payment.

Rights of holder of lien.

Rights of tenant.

Evidence of payment.

Assessment to and payment of taxes by claimant is insufficient to continue an adverse possession previously held by his grantor.—Miller v. Davis, 106 M. 300.

One who has a lien on lands has no right to intervene to pay the tax unless it is manifest that the land owner will not.—Pond v. Drake, 50 M. 302. But this section fixes the time when he may do so. Taxes paid by the mortgagee which should be paid by the mortgagor may be added to increase the charge upon the mortgaged premises.—Payne v. Avery, 21 M. 524. It is competent for a mortgagee to protect his mortgage interest against taxes, and the amount so paid may properly be included in a foreclosure decree.—Vaughn v. Nims, 36 M. 297; Walton v. Bagley, 47 M. 335. See also Farwell v. Bigelow, 112 M. 285; Fuller v. Kane, 110 M. 549. Taxes can generally be enforced only by the statutory remedies, and payment made by the mortgagee of land does not necessarily give him a right of action against the mortgagor as for money paid to his use, since the mortgagee would not have been personally liable for the payment of the taxes and the mortgagor's failure to pay them would only have rendered the property subject to seizure while the warrant was good for their collection.—Raynesford v. Phelps, 43 M. 342.

PAYMENT UNDER PROTEST: Where sale of land is threatened the test whether owner may safely pay under protest to prevent the sale and afterward sue to recover back the money seems to be whether the sale if made would constitute a cloud upon the title. A sale to satisfy an alleged tax which has no semblance of legality but is totally void on its face would not cloud title. An assessment under a statute which is unconstitutional and void, cannot be the basis of a sale that could cloud title. A threat to enforce payment of such a tax, no seizure of the goods or of the person having been made or threatened or authorized, where the officer has no authority to compel payment otherwise than by the sale of the land, which could injure no one, would not constitute a payment made in consequence thereof anything but a voluntary payment. A protest cannot alone change what would otherwise be in law a voluntary payment into an involuntary one, or change the rights of the parties; and one paying voluntarily under a claim of right cannot afterwards recover back the money although he protested at the time against his liability.—Detroit v. Martin, 34 M. 170. But this rule does not apply where a law under which levy is made is constitutional. Payment of tax under protest where property is threatened with seizure under tax warrant, or real estate is threatened to be sold is not voluntary.—Whitney v. Port Huron, 88 M. 268. In the case of taxes mailed township treasurer with notice of protest, notice held provable by accurate copy put in evidence, after proof of service.—Mich. Land, etc., Co. v. Republic Township, 65 M. 628.

Payment of personal tax before collector is authorized to inforce collection and without demand or threatened levy is voluntary and suit to recover cannot be maintained.—Baker v. City of Grand Rapids.—65 M. 76; Mills v. Township of Richland, 72 M. 100. A specific protest must be made when taxes are voluntarily paid or an action to recover back the payment will not lie. In suit to recover back taxes paid voluntarily under protest, the tax must be shown to be illegal for the reason specified in the protest.—Peninsula Iron Co. v. Crystal Falls, 60 M. 79. See also Mills v. Township of Richland, 72 M. 100. It is not the protest but the illegality of the tax that gives cause of action to recover taxes paid under protest. Payment without duress or levy is voluntary though made under protest. Irregularities in assessment which were not prejudicial to protestant give no right of recovery.—White v. Millbrook, 60 M. 532. See also Hill v. Graham, 72 M. 659.

Assumpsit lies to recover back an unlawful tax exacted under color of existing process and paid with protest; and interest will be allowed in such case. A municipality cannot escape liability for the amount of a tax illegally exacted on the grounds that the money was not to be used for municipal purposes.—Grand Rapids v. Blakely, 40 M. 367. Action lies against a municipal corporation to recover back illegal assessments paid under compulsion. Paying a tax under protest is an assertion of illegality.—Louden v. East Saginaw, 41 M. 18. If tax proceedings on their face are fatally defective action will lie to recover back money paid under them.—Moss v. Cummings, 44 M. 359. The township treasurer collects taxes as the agent of the township

and the township is liable for taxes wrongfully levied and collected except the amount paid county treasurer for State and county taxes, although paid out on school or highway orders.—Byles v. Golden Township, 52 M. 612. Action to recover back a tax paid under protest will lie when the assessment is of a particular class of property clearly identified and separable.—Herrick v. Big Rapids, 53 M. 554.

Payment of illegal tax under written protest after levy by an officer is involuntary though the tax-payer himself pointed out to the officer property on which the levy might be made.—Roedell v. White Cloud, 108 M. 506. A property owner paying taxes on a void assessment roll under protest and after demand does not pay them voluntarily.—Thompson v. Detroit, 114 M. 502. Recovery of personal tax paid under protest is not affected by immaterial variance of names such as did not mislead.—Barnhard v. White Cloud, 108 M. 508.

One who under protest has paid taxes assessed upon his lands cannot maintain an action for the repayment of such taxes against a city whose charter provides that it shall be sufficient defense to any action or proceeding against the city for the collection of any claim that such action or proceeding was begun before the common council had time to pass upon or investigate the claim, where he commenced his action before the next meeting of the council after the one at which the claim was presented.—Mason v. Muskegon, 111 M. 687.

Right of recovery of tax paid under protest exists only where tax itself is illegal. Levy on logs owned by lumber company to satisfy tax upon personal property of its president held not within the statute; that warrant did not authorize the seizure and that remedy was against officer or by replevin against the purchaser if sale was made. Tax having been paid before time for sale, payment was held to be voluntary.—Lumber Co. v. Manistee, 100 M. 466.

In action to recover taxes paid under protest, no showing can be made nor recovery had upon any ground not named in the protest.—Hinds v. Township of Belvidere, 107 M. 664. In order to warrant judgment for plaintiff in suit to recover taxes paid under protest, there must have been such jurisdictional defect as to render the tax void, and not mere irregularity in spreading tax or informality in warrant. Recovery of school tax paid under protest is not dependent upon formality of certificate furnished supervisor as to said taxes but depends upon whether said taxes were authorized by the district.—Sheldon v. Marion, 101 M. 256.

A protest against payment of special highway tax because levied against property of township to pay highway orders of certain road districts instead of being levied against the property of each road district on which orders were drawn, is sufficient.—McFarlan v. Township of Cedar Creek, 93 M. 558.

Action to recover drain taxes paid township treasurer under protest cannot be maintained against the township, Sec. 53 being applicable only to taxes under the general tax law.—Taylor v. Township of Avon, 73 M. 604. A township treasurer does not receive a ditch tax for the township, and assumpsit will not lie against the township to recover such a tax levied under unlawful proceedings.—Camp v. Algansee Township, 50 M. 4. In case of drain tax paid under protest action should be against collecting officer.—Hillyer v. Jonesfield, 114 M. 644. Action will not lie to recover drain tax paid under protest on ground of failure to file record with county clerk.—Matrau v. Tompkins, 99 M. 528. City taxes paid under protest cannot be recovered back merely because warrant had expired. Where collector threatens to sell property for void taxes, owner may pay under protest and recover back.—Lumber Co. v. City of Alpena, 97 M. 499.

Bill for accounting and that taxes levied and collected under a misapprehension of the requirements of the statute, but which were paid from year to year without protest, be returned to tax-payers cannot be sustained in absence of averment of fraud in assessment or levy.—Manistee Lumber Co. v. Township of Springfield, 92 M. 277. Where city charter so provides presentation to the council of a verified claim for money paid under protest for taxes is a condition precedent to bringing suit to recover.—Crittenden v. Mt. Clemens, 86 M. 220. Where (under law of 1891) tax assessed to bank on mortgages was paid under protest, held that the right to recover was lost by failure to appeal to board of review.—Michigan Savings Bank v. Detroit, 107 M. 246.

PART PAYMENT: Where part of the tax only is paid it should be all of certain taxes or on a definite part of the land, or if neither is practicable, payment may be accepted and receipted for on an expressed undivided interest in the description. In such cases the treasurer should note across the face of the receipt in ink (receipts should never be written with a pencil) the items of tax unpaid, or the definite or undivided part of the description on which the tax remains unpaid. The importance of strict compliance with the law in this regard should be apparent to every receiver of taxes.

See Secs. 46, 59, 107, 117.

Settlement by township treasurer.

SEC. 54. Am. Act 225 of 1897. (3877) Within one week after the time specified in his warrant, the township treasurer shall pay to the county treasurer, all State and county taxes collected.

A collector who has received state and county taxes is required to pay the sums received over to the county treasurer in the absence of legal pro-

test from tax-payers and cannot retain it on his claim that the collection was illegal or irregular.—Berrien Co. Treasurer v. Bunbury, 45 M. 79. Township orders received in the township treasury as money must be accounted for as money received.—Byles v. Golden Township, 52 M. 612.

Where one whose duty it is to collect and pay to the proper authorities municipal taxes, by mistake pays to the county treasurer a sum which should have been paid to the city treasurer it is held that he may proceed by mandamus, in his individual name, to compel the county treasurer to make restitution.—Webster v. Wheeler, 5 Det. Leg. News 937.

Mandamus will not lie to compel county treasurer to refund taxes unlawfully levied if there is any issue involved which should go to a jury.—Byles v. Golden Township, 52 M. 612.

In case of taxes voluntarily paid, but regarding which there is an irregularity or any want of authority to assess or levy, amount received should be paid over the same as if no such irregularity or want of authority existed.—3983 C. L. '97.

See Secs. 42, 44.

ON THE RETURN OF DELINQUENT TAXES.

Delinquent taxes on land.

SEC. 55. (3878) If the township treasurer or other collecting officer shall be unable to collect any of the taxes on his roll assessed on real property, he shall make a statement of the same with a full and perfect description of such property, as assessed upon said roll, with the several taxes assessed upon

Verification of statement.

each parcel thereof, which statement shall be verified by the affidavit of such treasurer or collector that such taxes remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels liable to pay such sums whereupon he could levy the same. .

Return of delinquent personal taxes.

The said treasurer or collector shall also make a statement showing the taxes upon personal property remaining unpaid, and the names of the persons against whom assessed, and the amount against each; and in such statement shall set forth the amount of all

Verification.

moneys collected by him on account of taxes, which statement shall be verified by the affidavit of such treasurer, in which he shall state in substance that the sums mentioned in such statement as uncollected remain unpaid; that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the person liable to pay such sums whereupon he could levy the same, and that the amount of moneys collected

County treasurer shall compare.

by him upon such tax roll is truly stated therein. The county treasurer shall immediately compare such statements with the

Certificate.

said tax roll, and if he finds the same to be correct, he shall add to each of them a certificate showing that he has examined and compared such statements with the said tax roll and found them correct, and shall file such statements in his office: *Provided*,

When county treasurer may reject tax.

That the county treasurer shall, at the time of making such comparison, and at no other time, reject any tax upon any land which shall have been twice assessed, or upon any parcel which shall be so erroneously or defectively described upon the

Receipt to collector.

tax roll that it cannot be correctly and easily ascertained. The county treasurer shall give to the township treasurer a receipt, stating the amount of moneys paid to him by such treasurer, for which the township shall receive a credit on the books of the county treasurer, and he shall also give the township treas-

Collector's voucher.

urer a statement of all taxes rejected by him, the amount of delinquent taxes returned, and the amount of any unpaid taxes

on personal property, which receipt and statements shall be the vouchers of such treasurer of the amounts specified therein.

The treasurer's return of delinquent lands must describe the lands as they are described on the tax roll. He has no authority to change the descriptions in any particular. The descriptions should be entered on his return in the numerical order of the sections, followed by descriptions in cities and these by descriptions in villages, if any, concluding with platted lands not in corporate limits, if any. If part payment of the taxes has been made the return should not include the taxes which have been paid or the part of the description on which all the taxes have been paid.

City treasurers have no more authority for withholding their returns after March 1 than have township treasurers.

A return which is neither signed by the collector nor verified by his oath held to be unofficial and of no legal value.—Upton v. Kennedy, 36 M. 215. Failure of township treasurer to verify his return of delinquent tax land is fatal to sale.—Seymour v. Peters, 67 M. 415. Where the township treasurer's return does not show that personal demand was made for the taxes, but was in statutory form, held sufficient, as if personal demand was necessary it must be presumed to have been made.—Dickison v. Reynolds, 48 M. 159. Return of inability to find the personal property in possession of person chargeable with payment of taxes is a condition precedent to a valid sale, and in the absence of such return the existence of such personal property may be shown to defeat such sale.—Tompkins v. Johnson, 75 M. 181. Return of taxes made before the expiration of time for making the return is no wrong to the taxpayer, whose right to make payment after the return is the same as before.—Drennan v. Bierlein, 49 M. 272; Shefferly v. Auditor General, 6 Det. Leg. News 240. Premature return does not affect the jurisdiction or void the decree.—Conley v. McMillan, 6 Det. Leg. News 317. In Bailey v. Haywood, 70 M. 188, it was held that premature return by township treasurer renders sales therefor void; but this holding was under a law that provided for office charges after the lands were returned.

One who had purchased the equity of redemption of mortgaged lands after a tax had been assessed thereon had personal property on the land that the collector falsely returned nulla bona and the tax became a lien on the land from which the owner of the mortgage had to redeem after foreclosure. Held that the latter had a right of action at common law against the collector for injury resulting to him in being compelled to redeem from the tax sale.—Raynesford v. Phelps, 43 M. 342. A tax sale for a void tax does no such injury to a mortgagee as will sustain an action against the tax collector for damages; and in such a suit the collector is not estopped by his return from showing that the tax was void.—Raynesford v. Phelps, 49 M. 315.

County treasurer is not authorized to pass upon irregularities in returns, but is required to accept returns from city when made as charter provides.—City of Jackson v. Jackson County Treasurer, 117 M. 305. But he should reject all erroneous descriptions as provided in this section. This he must do at the time of the comparison, and should not include these rejected descriptions in his transcript sent to the Auditor General.

VILLAGE TAXES: Renewal of warrant for collection of village taxes by order of council is valid though made after expiration of warrant.—Village taxes not invalidated by reason of president extending warrant to October 7, when council has authorized its renewal to a later date.—Lumber Co. v. Village of Oscoda, 97 M. 221. No formal notification to the officer to whom the warrant is directed is necessary to a valid extension of it.—Griswold v. Union School District, 24 M. 262.

Town treasurer must account for the full amount of the tax roll either in money or the return of unpaid taxes. A township must make good the amount of the default of its treasurer.—Oceana County v. Hart Township, 48 M. 319. Statement of collector under oath of all moneys received is required to secure an accurate accounting of all the moneys in the collector's hands, and has no reference to the return of lands for delinquent taxes.—Tweed v. Metcalf, 4 M. 579..

See Secs. 56, 112.

Discharge of township treasurer's bond

SEC. 56. (3879) The county treasurer shall thereupon indorse the fact of such settlement on the bond of the township or city treasurer, which indorsement shall operate as a discharge of the treasurer and his sureties from the obligation thereof, unless the return of such treasurer is incorrect, in which case such bond shall continue in force, and such treasurer and his sureties shall be liable thereon for all damages occasioned by such incorrect returns; and the township treasurer shall immediately deposit his tax roll with the county treasurer, who shall file and preserve the same in his office, and which said roll or a duly certified copy thereof shall, for all purposes, in all courts, suits and proceedings, be taken, held and

Tax roll and copy to be filed with county treasurer.

used as evidence, in the same manner and with like effect as the original roll. The county treasurer shall give the township or city treasurer a statement of all the personal taxes which remain uncollected, taken from the return of the latter, with a warrant authorizing him or his successor to collect them according to law, and thereafter such treasurer or his successor shall have the same power to collect such taxes as under the original warrant.

Uncollected personal taxes.

County treasurer's warrant.

City and township treasurers required to pay to the county treasurer the full amount of the tax levy upon personal property whether it has been collected or not.—City of Muskegon v. County of Muskegon, 6 Det. Leg. News 1046.

County treasurer can only issue supplemental warrant upon town treasurer filing the verified statement provided for (Sec. 55), which must strictly conform to the statutory requirements.—Township of Port Huron v. Potts, 78 M. 435. Where township treasurer fails to make return of unpaid personal taxes, county treasurer's warrant is void and no action can be maintained by township to collect although regularly assessed and payment promised.—Bangor v. Transportation Co., 106 M. 223. Warrant is absolutely void where no verified return has been made to the county treasurer as required by Sec. 55.—Northwestern Cooperage and Lumber Co. v. Scott, 6 Det. Leg. News 1065.

Record and transcript of delinquent taxes.

SEC. 57. Am. Act 225 of 1897. (3880) When any county treasurer shall receive from a township treasurer a statement of unpaid taxes, together with a list of the lands on which the same are delinquent, verified according to law, such county treasurer shall enter the same at length on the books in his office, provided for that purpose, and he shall make a transcript of all the descriptions of land returned as delinquent for unpaid taxes, except such as may have been rejected by him, with the several taxes assessed upon such descriptions respectively, which transcript shall be compared by the county clerk with the statement of the county treasurer, and if the county clerk finds it to be a true transcript thereof, he shall add to it a certificate that he has, upon careful examination, found it correct. Such transcript, so made, compared and certified, shall be forwarded by the county treasurer to the Auditor General, by the first day of May next after the return of such statement; but such transcript shall be receivable at any time during said month of May, and the Auditor General is hereby authorized, when in his judgment it may be deemed expedient, to extend the time in which said transcript shall be returned to him.

Certificate of county clerk upon transcript.

Return to Auditor General.

County clerk not required to certify to township treasurer's returns to county treasurer, but to the accuracy of the county treasurer's transcript to the Auditor General.—Hunt v. Chapin, 42 M. 24.

In an action to charge county treasurer on his bond with failure of duty in not forwarding to the Auditor General lists of delinquent tax lands it is incumbent to show that the transcripts were not forwarded within a reasonable time after actual return to the treasurer by the collectors.—Supervisors of Houghton v. Rees, 34 M. 481. Mandamus will not be granted to compel Auditor General to receive transcript which is not forwarded within the statutory period. Whether or not Auditor General might in his discretion accept returns forwarded later there is nothing in the statute making it his duty to do so or conferring on the county the right to demand credit upon its account with the State for the amount of such belated returns.—Houghton County v. Auditor General, 36 M. 271.

County treasurer's transcript to Auditor General should not include any lands or taxes rejected by him (Sec. 55), nor any personal taxes. It should be forwarded as soon as is practicable after returned to him. At the same time he should return a transcript of all lands returned for village (corporation) taxes. There is no advantage in returning the latter before the regular returns are made.

All lands and all taxes thereon returned to the county treasurer (except those rejected by him as provided in Sec. 55) must be included in this transcript sent to the Auditor General, whether the taxes are paid before such transcript is forwarded or not.

County treasurer may receive taxes returned.

SEC. 58. (3881) After the return of lands for unpaid taxes the county treasurer is authorized to receive, under like provisions as in section fifty-three of this act, the amounts of the several taxes or any of them due, and the board of supervisors in each county may authorize notice to be given to all delinquent taxpayers so far as known. The county treasurer shall issue duplicate receipts for all such taxes received by him, which shall be countersigned by the county clerk, and one of such duplicates shall be left with said clerk, who shall make an entry of the amount for which every such receipt was given, with the name and postoffice address of the person paying such tax, in a book provided for that purpose, and shall on the first Monday of each month, forward all such receipts to the Auditor General, in such manner as he may direct.

Duplicate receipts.

County clerk to record.

Transmittal to Auditor General.

County clerks should never countersign duplicate receipts in advance, but must countersign them as issued and retain one at that time. There will then be no reason why all the duplicates for the month may not be promptly forwarded to the Auditor General after the close of each month. They should see that the postoffice address of the person paying is entered on both the receipt and the duplicate.

Section does not authorize payment to county treasurer under protest and recovery by suit against county. Payment to county treasurer under protest to secure certificate under Sec. 135 is not payment under duress and gives no common law right for recovery of amount paid.—Weston v. County of Luce, 102 M. 528.

Partial payment.

Interest and collection fee.

Lien for expenses.

SEC. 59. (3882) Am. Act 262 of 1899. Any person may pay the taxes or any one of the several taxes, on any parcel or description of land returned as aforesaid, or on any undivided share thereof, with interest computed thereon from the first day of March next after the same were assessed, at the rate of one per cent per month or fraction thereof, with four per cent as a collection fee, to the county treasurer of the county in which the lands are situated, at any time before they are sold: *Provided*, That on all descriptions of land on which any of the several taxes remain unpaid on the first day of October next preceding the time prescribed for the sale thereof, there shall be charged an additional one dollar for expenses and which shall thereafter be a lien on said land and when collected shall belong to the general fund of the State.

The charge for interest and expense provided for by Sec. 59 as amended by Act 262 of 1899 applies to all taxes unpaid and not merely to those assessed after the amendment.—Webster v. Auditor General, 6 Det. Leg. News 604.

As to penalty see Lacey v. Davis, 4 M. 140.

See Secs. 58, 117.

OF THE SALE, REDEMPTION AND CONVEYANCE OF DELINQUENT TAX LANDS.

Delinquent land subject to sale.

SEC. 60. (3883) All lands which have been or may hereafter be returned to the Auditor General as delinquent for taxes and upon which any taxes are now or shall hereafter remain unpaid, after their return to the Auditor General under

the provisions of this act, or to the several county treasurers of the State under the provisions of Act number 200 of the Public Acts of 1891, for the period of one year or more, shall be subject to disposition, sale and redemption for the enforcement and collection of such tax liens, in the method and manner as hereinafter provided. In the disposition and sale of such delinquent tax lands the people of the State of Michigan shall be deemed to have a valid lien upon such lands, with all the rights to enforce the same as a preferred or first claim upon such lands, and the rights and choses to enforce such lien shall be held and construed by all the courts of this State as the *prima facie* rights of the State, and shall not be set aside or annulled except in the manner and for the causes herein specified.

Right to enforce lien.

The act, though altering the time of sale and the period for redemption as to lands previously assessed, is not open to the objection that it violates the provision of the federal constitution (Sec. 10, Art I) that no state shall enact any law impairing the obligation of contracts, since proceedings for the collection of taxes are essentially in invitum, and do not presuppose the existence of any contract relation; nor does the act conflict with the provision of the state constitution (Sec. 32, Art. VI) that no person shall be deprived of his property without due process of law.—Muirhead v. Sands, 111 M. 487.

Proceedings to collect taxes are usually preceedings in rem. The fact that the statute authorizes these proceedings to be taken in a court of equity does not make them any the less proceedings in rem. The property alone is described in the petition. Every one knows that his land is subject to taxation; every one is presumed to know the law. If he fails to pay he must be held to know that proceedings will be taken to enforce these taxes against his land and not against him personally. If not paid he knows that his property will be advertised and sold under a decree in chancery, without reference or further notice to the owner of the land or to the person against whom it is or may be assessed.—Dumphy v. Hilton, 6 Det. Leg. News 432.

Section not inconsistent with Sec. 125.—Muirhead v. Sands, 111 M. 487. See Sec. 138.

OF THE NOTICE AND LISTS OF LANDS TO BE SOLD.

Petition for decree of sale.

SEC. 61. Am. Act 225 of 1897. (3884) Am. Act 262 of 1899. In sufficient time before the time fixed herein for the annual tax sale, the Auditor General shall prepare and file in the office of the county clerk in each county in which lands are to be sold under the provisions of this act, a petition addressed to the circuit court for said county in chancery, stating therein by apt reference to lists or schedules annexed thereto a description of all lands in such county upon which taxes have remained unpaid for more than one year after they were returned as delinquent, and the total amount of such taxes, with interest computed thereon to the first day of May following the filing of said petition, and a collection fee of four per cent extended separately against each parcel of land, and he shall include with and add to such total amount against each parcel, one dollar for expenses. Such petition shall pray a decree in favor of the State of Michigan against said land for the payment of the several amounts so specified therein, and in default thereof that such lands be sold. It shall be signed by the Auditor General and need not be otherwise verified, and shall be deemed equivalent to a bill in chancery to enforce the lien for such taxes, interest and charges, averring their validity, that they have not been paid, and praying for a sale to pay such lien.

Showing required.

Interest and charges.

Verification.

Lands heretofore or hereafter bid off in the name of the State and thus held, and on which taxes have been assessed subsequent to the tax for which such lands were sold and purchased by the State, shall be included in such petition for all such subsequent taxes which have remained unpaid for more than one year after they were returned as delinquent. The petition shall be in a substantial record book, with the lists of lands and taxes annexed following the same therein. Such record shall be ruled with appropriate columns, one containing a description of the lands, with columns for the total amount of taxes, interest and charges claimed due on each parcel of land opposite thereto; also with blank columns, one with heading: "Parts of descriptions paid before sale or withheld;" another, "By whom paid;" another, "Amount paid before sale;" another, "Amount decreed against lands;" another, "Special orders;" another, "Interest in each parcel sold;" another, "Name of purchaser;" another, "Address of purchaser;" another, "Number of certificate;" another, "Remarks." The Auditor General may add such other columns as he may find necessary. The word "petition" shall be construed to include the lists annexed thereto. Said record shall be called "Tax Record." Parts of descriptions of land upon which taxes are paid before sale, or which are withheld from sale, the amount paid on taxes before sale, the amount of taxes, interest and charges decreed against lands, special orders made by the court relating to any parcel of land or any tax, the interest in each parcel of land sold, the name of each purchaser and his address, and the number of certificate of sale shall be entered in said record under their appropriate headings, opposite to the description of lands affected thereby.

Unsold delinquent lands to be included.

Form of petition.

Tax Record.

Copy of petition found in county clerk's files cannot be considered as the original petition when the proper petition is in county treasurer's office.—Barnum v. Barnes, 118 M. 264. Where the petition is produced from the county treasurer's office and other papers including the order of publication, which order recites the fact of the filing of the petition are produced from the clerk's office it will be presumed that the petition was filed with the clerk and that the failure to mark it as filed was a clerical omission.—Mann v. Parsons, 6 Det. Leg. News 288.

SEC. 62. Am. Act 154 of 1895 and Act 225 of 1897. (3885) Am. Act 262 of 1899. It shall be the duty of the county clerk, on the filing of the said petition, to at once present the same to the circuit judge of the county in which said delinquent tax lands are situated, and it shall be the duty of said circuit judge to make an order in the form herein prescribed, which order, when so made and signed by the circuit judge, shall be countersigned by the county clerk as register in chancery, and recorded by him in the proper books of his office, and thereupon it shall be the duty of said county clerk to immediately make a true copy of said order, and transmit the same to the Auditor General. Said order shall be substantially in the following form:

Duty of circuit judge and county clerk.

Form of order of hearing.

STATE OF MICHIGAN, } ss.
County of..... ..... }

The circuit court for the county of.....
in chancery.

In the matter of the petition of....., Auditor General of the State of Michigan, for and in behalf of said State, for the sale of certain lands for taxes assessed thereon: On reading and filing the petition of the Auditor General of the State of Michigan, praying for a decree in favor of the State of Michigan, against each parcel of land therein described, for the amounts therein specified, claimed to be due for taxes, interest and charges on each such parcel of land, and that such lands be sold for the amounts so claimed by the State of Michigan. It is ordered that said petition will be brought on for hearing and decree at the.....term of this court, to be held at....., in the county of....., State of Michigan, on the..... day of.....A. D. 18...., at the opening of the court on that day, and that all persons interested in such lands or any part thereof, desiring to contest the lien claimed thereon by the State of Michigan, for such taxes, interest and charges, or any part thereof, shall appear in said court, and file with the clerk thereof, acting as register in chancery, their objections thereto, on or before the first day of the term of this court above mentioned, and that in default thereof the same will be taken as confessed and a decree will be taken and entered as prayed for in said petition. And it is further ordered that in pursuance of said decree the lands described in said petition for which a decree of sale shall be made, will be sold for the several taxes, interest and charges thereon as determined by such decree, on the first Tuesday in May thereafter, beginning at ten o'clock a. m., on said day, or on the day or days subsequent thereto, as may be necessary to complete the sale of said lands and of each and every parcel thereof, at the office of the county treasurer, or at such convenient place as shall be selected by him at the county seat of the county of....., State of Michigan; and that the sale then and there made will be a public sale, and each parcel described in the decree shall be separately exposed for sale for the total taxes, interest and charges, and the sale shall be made to the person paying the full amount charged against such parcel, and accepting a conveyance of the smallest undivided fee simple interest therein; or, if no person will pay the taxes and charges and take a conveyance of less than the entire thereof, then the whole parcel shall be offered and sold. If any parcel of land cannot be sold for taxes, interest and charges, such parcel shall be passed over for the time being, and shall, on the succeeding day, or before the close of the sale, be reoffered, and if, on such second offer, or during such sale, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same in the name of the State.

Witness the Hon. ....., circuit

judge, and the seal of said (circuit) court of .....
county, this ..... day of ..... A. D. 18....

.....
Circuit Judge.

Countersigned,

.....
Register.

The order of hearing is not required to be taken in open court and there is no reason why county clerks should wait for the court to convene before presenting the petition. The judges should be advised of the facts "at once" upon the filing of the petition. The filing of the petition and every order made should be promptly recorded in the chancery records. A certified copy of the order of hearing should be promptly forwarded to the Auditor General.

Court may make a valid order to take the place of a void one, providing the valid order is made in time and follows the requirements of the statute. —Haven v. Owen, 6 Det. Leg. News 293.

County clerk's sureties liable for his failure to enter and record all orders, etc., and to faithfully perform the duties imposed upon him by law.—2571 C. L. '97.

Hearing must be at a term of court subsequent to that in which petition is filed, and when fixed for the same term no jurisdiction is acquired to enter decree.—Ledyard v. Auditor General, 6 Det. Leg. News 278. But may be at a special term held subsequent to filing of petition.—See Roberts v. Loxley, 6 Det. Leg. News 286.

Statutory notice as to place of sale sufficient.—Clark v. Moyer, 5 M. 462; Wisner v. Davenport, 5 M. 501. Statutory form of order of hearing sufficient. Waldron v. Auditor General, 109 M. 231. If at the time of filing the petition the county treasurer has any proper reason for selecting a place of sale at the county seat other than his office the judge should be so advised, and in such case the name of the place selected may be substituted in order of hearing for the words "at the office of the county treasurer," but if this is done the words "or at such convenient place, etc.," shold not be stricken out.

Auditor General to designate newspapers.

SEC. 63. Am. Act 225 of 1897. (3886.) The newspapers in which such order and petition are to be published shall be designated by the Auditor General on or before the first day of September in each and every year, and not afterwards, unless the publisher of the paper so designated shall fail to accept such designation within fifteen days after the same is made, or shall refuse or neglect to publish and print such order and petition, or unless, from any other cause, such publication shall become impracticable; in which case the Auditor General shall designate some other paper for that purpose before the time limited for commencing such publication: *Provided*, That in counties where one or more newspapers have been printed and published more than one year prior to such designation [of] one of such papers shall be designated for the publication herein required.

Proviso.

No provision for any record of the designation.—Waldron v. Auditor General, 109 M. 231. The fact that neither the notice nor the affidavit of publication show affirmatively that Auditor General designated paper cannot be urged as objection to jurisdiction. Statute requires neither. When petition is signed by Auditor General it will be presumed that he authorized publication where it appears.—Watts v. Bublitz, 99 M. 586.

The regularity of tax proceedings is not affected by the fact that the order of the Auditor General, designating the newspaper in which the proceedings should be published, is made prior to the time that the petition is filed.—Wilkin v. Keith, 6 Det. Leg. News 305.

As to power of revocation of designation see Featherly v. Auditor General, Mich. Mandamus Cases, 1027; Brown v. Auditor General, Mich. Mandamus Cases, 1028.

Publication in certain events.

SEC. 64. (3887) In case there is no paper published in such county, or if from any cause no paper can be secured in any county to publish such order and petition, the Au-

ditor General shall cause such order and petition containing the list of lands delinquent for taxes to be printed in proper form for general distribution, and shall furnish the county treasurer with such number of the same as may be necessary to furnish each voter at the last general election in said county with one copy, and such county treasurer shall distribute the order and petition in such manner that copies thereof may become public in every township in said county, and shall post or cause to be posted three copies in three public places in each township, and shall file affidavit of the posting and distribution of the same in the usual form in the office of said county treasurer and of the Auditor General.

County treasurer to distribute.

Proof of distribution.

Public places—what deemed.—People v. LaGrange, 2 M. 187. Affidavit should show where posted.—People v. Commissioners of Nankin, 14 M. 528.

Cost of advertising.

SEC. 65. (3888) The cost of such advertising shall in no case exceed the sum of forty cents for each description of land so advertised and sold, and shall be paid by the State Treasurer, upon the warrant of the Auditor General, out of the general fund of the State.

Publication of order and petition.

SEC. 66. Am. Act 162 of 1895. (3889) Am. Act 31 of 1899 and Act 264 of 1899. The Auditor General shall cause a copy of said order and a copy of said petition to be published at least once in each week for four successive weeks next prior to the time fixed for the hearing thereof, in some newspaper published and circulating in the county where such petition is filed, to be selected by the Auditor General. Said order and petition shall both be published in the same newspaper, the order immediately preceding the petition: *Provided*, In such petition it shall be sufficient to print against each parcel the "amount of taxes," "interest," "charges," "total," due on each. The cost of such publication shall be paid by the State on the warrant of the Auditor General. The proprietor of such paper shall furnish the proper county treasurer and Auditor General each with two copies of each issue containing such publication, and it shall be the duty of such Auditor General and treasurer to carefully examine the notices published and see that they are correct. Any person familiar with the facts may make an affidavit as to the publication required. The Auditor General shall not pay for any such publication until satisfied that it has been made according to law. The publication of the order and petition aforesaid shall be equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition, of the filing thereof, of all proceedings thereon and on the sale of the lands under the decree, and shall give the court jurisdiction to hear such petition, determine all questions arising thereon, and to decree a sale of such lands for the payment of all taxes, interest and charges thereon. The circuit court in chancery shall have jurisdiction to hear, try and determine the matters alleged in such petition, even though the amount involved therein be less than one hundred dollars. It shall be the duty of the prosecuting attorney to prosecute all

Copies of publication.

Publication equivalent to personal notice.

Jurisdiction of circuit court.

Prosecuting attorney to prosecute.

such proceedings on the part of the State. If he shall refuse, neglect or be unable to do so, the court shall appoint some competent person to take charge of and prosecute the same, who shall be paid by the county. The board of supervisors may employ some competent person to prosecute such proceedings or assist therein. Proof of the publication of the order and petition herein required shall be filed in the office of the county clerk before any final order is made. Any person having any interest in the lands or any portion thereof included or referred to in said petition desiring to contest the validity of any tax shall file in writing his objections thereto with the clerk of the county in which said lands are advertised for sale and serve a copy thereof on the prosecuting attorney of the county, on or before the day fixed in said notice for the hearing of such petition, and shall not be allowed to make any objections not therein specified. If on the day fixed in such notice for the hearing of such petition or on the day following that day, it shall be made to appear to the court that any person has been prevented from filing his objections to any tax without any fault on his part, such further time may be granted for that purpose as may seem proper, not exceeding five days. The court shall give precedence to the hearing of such petition over all other business, shall examine, consider and determine the matters therein stated and objections made, in a summary manner without other pleadings, and make final decree thereon as the right of the case may be. The taxes specified in the petition shall be presumed to be legal and a decree be made therefor unless the contrary is proved. Evidence shall be taken in open court. All oral testimony shall, at the request of any person interested, be written down and filed. The court may make such orders from time to time as may be necessary to facilitate the proceedings, and shall decide all questions as to the admissibility of evidence, and the decisions so made shall be final and not subject to review or appeal. If the lands of two or more persons have been assessed together, the court may, if practicable, separate the same and apportion to each parcel its just proportion of the taxes, interest and charges. If any tax shall be found illegal, such part shall be set aside and the remaining tax shall be decreed valid. The total amount of taxes, interest and charges, as fixed by the court, shall be entered by the register of the court opposite each parcel of land in the column of said record under the heading "Amount decreed against lands." If the court shall make any order setting aside the taxes on any parcel of land, or any part thereof, or any special order relating to any particular parcel of land, or taxes thereon, a brief entry of such order shall be made upon said record opposite such land or tax, which shall be signed by the judge of the court, either by his full name or initials, and such entry shall have the same effect as if made and entered as a part of a final decree. At least ten days prior to the time fixed for the sale of such lands, the court shall make a final decree in favor of the State

Filing of proof of publication.

Contested taxes.

Notice of contest to be served on prosecuting attorney.

Granting further time.

Hearing to have precedence.

Evidence.

Court orders and decisions.

Separation and rejection of taxes.

Register to enter amounts decreed.

Entry and signing of special orders in Tax Record.

Final decree.

of Michigan for such taxes, interest and charges as shall be valid, and determine the total amount thereof chargeable against each parcel of land, and shall order and decree that such several parcels of land, or so much of each as may be necessary to satisfy the amount fixed by such decree, shall severally be sold as the law directs. Such decree shall be considered as a several decree in favor of the State of Michigan against each parcel of land for each tax included therein. The court may decree such costs against a person contesting any tax as may be equitable, if the tax, or any part thereof which remains unpaid be adjudged valid.

Decree in severally.

Costs may be decreed.

PUBLICATION: All writs, processes, proceedings and records in any court within the State shall be in the English language.—1115 C. L. '97; Sec. 6, Art. XVIII, Constitution. Whenever the law provides for a publication in a newspaper it means one published in the English language.—Auditor General v. Hutchinson, 113 M. 245. Publication of order and petition must be in newspaper published in the English language.—Visscher v. Ottawa Circuit Judge, 116 M. 666. In Schaale v. Wasey, 70 M. 414, held that publication of notice of guardian's sale published in English language, but in a German paper was not a proper publication under our laws.

"Four successive weeks" requires that full interval between the first notice and the sale.—Bacon v. Kennedy, 56 M. 329; Gantz v. Toles, 40 M. 725. Publication must be in successive issues without omission.—Mills v. City of Detroit, 95 M. 422. A statutory foreclosure is not invalidated by certain changes in the paper in which the advertisement is published.—Perkins v. Keller, 43 M. 53. Dollar mark on advertised list not requisite to validity of decree.—Muirhead v. Sands, 111 M. 487. But must be printed therein to comply with Auditor General's instructions in order to entitle publisher to payment. Auditor General having designated "Muskegon Chronicle" (there being Muskegon Daily Chronicle and Muskegon Weekly Chronicle) and publication being made in Muskegon Weekly Chronicle and treated by Auditor General as a compliance with his designation, held that it was a sufficient and legal publication.—Waldron v. Auditor General, 109 M. 221. Publication in supplement sufficient.—Mann v. Carson, 6 Det. Leg. News 258; Wilkin v. Keith, 6 Det. Leg. News 305.

PROOF OF PUBLICATION: Affidavit prima facie evidence.—10165 C. L. '97. Proof should not be sworn to before prosecuting attorney or any other attorney who is engaged in the proceeding. See 2640 C. L. '97. Copy of advertisement must be identical with the one published.—Wilkinson v. Conaty, 65 M. 614. Proof of publication authorized by statute is not exclusive of any other.—Schlee v. Darrow Estate, 65 M. 362. Original proof of publication being erroneous, second affidavit and testimony of publisher held admissible but not conclusive.—Wyman v. Baer, 46 M. 418. Proof of publication held to be sufficient where prior to the entry of decree a second affidavit was filed to correct supposed defects in the first and both affidavits taken together conformed to the requirements of the statute.—Nester v. Church, 6 Det. Leg. News 284.

Files competent evidence of publication.—Colton v. Rupert, 60 M. 318. But can only be corroborative where statute provides what proof shall be filed.

Affidavit need not recite that affiant is familiar with the facts.—Muirhead v. Sands, 111 M. 487. Proof of publication properly sworn to though not signed by affiant held valid. Failure to recite that newspaper is published in county not fatal; it can be supplied by reference to Auditor General's certificate of designation.—Wynkoop v. Grand Traverse Circuit Judge, 113 M. 381. Where there was no record showing filing of proof of publication and no proof found in clerk's office, publisher testified that statutory publication was made and proof thereof filed; held that this did not show that any sufficient proof was filed and that the provisions of Sec. 99, "no tax or sale * shall be held invalid by showing that any * affidavit, paper * cannot be found in the proper office" does not apply to proof of publication.—Benedict v. Auditor General, 104 M. 269. When proof of publication has been duly filed with the register the fact that he attached it to the Tax Record does not render the proceedings void.—Brooks v. Roche, 5 Det. Leg. News 811. Affidavit reciting publication once in each week commencing September 23d and terminating October 21st held sufficient.—Garner v. Wallace, 118 M. 387.

Affidavit showing publication for "four successive weeks first, etc.," held insufficient, it not showing publication for four consecutive weeks next prior to hearing.—McFadden v. Brady, 6 Det Leg. News 283. Defect in affidavit of publication cannot be supplied by parol testimony.—Ibid. Where proof conforms to statute, it will not be held invalid because it calls the copies of the order and petition a notice when the papers attached clearly show compliance with the statute.—Spaulding v. O'Connor, 5 Det. Leg. News 697. But where no paper is found attached to the affidavit, but in the files with the affidavit are found a printed copy of the petition, a list of the

delinquent land and a copy of the order of hearing printed on what purported to be a supplement to the newspaper making the affidavit, it will be presumed that the papers were originally attached and held that there was proper proof of publication.—Mann v. Carson, 6 Det. Leg. News 288.

In Auditor General v. Circuit Judge, Mich. Mandamus Cases 634, objection was made that the paper in which publication had been made was not a newspaper published in the county, within the statute. It appeared that the newspaper was published as the "Roscommon Democrat;" that its office was in that county, and that the papers printed elsewhere, came to the office in bulk and were addressed and distributed through the post office of that place. Mandamus was granted to compel respondent to hear and determine the amount due for taxes on certain lands and enter decree therefor.

The full order and petition as published, including list of lands and taxes, must be securely affixed to the affidavit of publication before the affidavit is signed and sworn to. No other part of the paper in which publication is made should be affixed to the affidavit. Care should be taken to file the affidavit and the advertisement affixed thereto in such form that they may be folded and placed in the files without the possibility of their being detached or mutilated therein or when taken therefrom. In Featherly v. Hoffman, 117 M. 42, the files showing an incomplete advertisement affixed to affidavit of publication (the list of lands and taxes was missing), the court vacated the decree and set aside sale made thereunder. So also in Vliet v. Hoffman, 117 M. 255.

Further as to proof of publication see Woods v. Monroe, 17 M. 238; Perrine v. Fetters, 35 M. 233; Gillett v. Needham, 37 M. 143; Dexter v. Cranston, 41 M. 448; Snyder v. Hemmingway, 47 M. 549; National Bank v. Fonda, 65 M. 533; Feustmann v. Estate of Gott, 65 M. 592; Horton v. Monroe, 98 M. 195; Dodsley v. Probate Judge, Mich. Mandamus Cases 664.

JURISDICTION: The first requisite to adjudication of validity of taxes before sale is jurisdiction.—Taylor v. Deveaux, 100 M. 581. Publication of order and petition (properly proven) gives court jurisdiction to enter decree for sale.—In re. Petition of Wiley, 89 M. 58. Failure to enter an order pro confesso before decree, is a mere irregularity.—Jenkinson v. Auditor General, 104 M. 34; and does not make sale void.—Hooker v. Bond, 118 M. 255. The act does not require personal service of order of hearing.—Muirhead v. Sands, 111 M. 487. This section not unconstitutional because of failure to provide for personal service.—Ball v. Ridge Copper Co., 118 M. 7; Youngs v. Peters, 118 M. 45.

NOTICE: A tax sale will not be set aside in equity because the owner, a non-resident, had no actual notice of the proceedings and supposed that the tax had been paid by one to whom he had sold the land by contract requiring the vendee to pay the taxes.—Hall v. Mann, 118 M. 201.

PROSECUTION: Prosecuting attorney shall prosecute or defend in all suits, applications and motions in which the State or county may be a party, or interested.—2556 C. L. '97. In Latimer v. Circuit Judge, Mich. Mandamus Cases 555, mandamus to strike from the files a petition filed by the Auditor General for a re-hearing, for the reason that the Auditor General and the counsel employed by the City of Muskegon appeared for petitioner upon such application to the exclusion of the prosecuting attorney was denied. State not liable for costs in case of decision in favor of tax-payer contesting the sale.—Auditor General v. Baker, 84 M. 113.

Whether objections go to the validity of the law or of the proceedings taken under it, they must be made and filed in writing on or before the day fixed for the hearing, and no objections not so stated and filed, can be allowed. The statute does not contemplate any mere dilatory pleading. The objection that the petition does not state the fact that a sale of the lands described therein has not been made is without force. The form of petition is sufficient if it contains the facts necessary to be stated as prescribed by the statute. The law is not unconstitutional for the reason that it provides for advertising a sale of lands for unpaid taxes before obtaining decree therefor, or that it cuts off the common law right of trial by jury or that it makes the decision of the circuit judge as to the exclusion or admission of evidence final.—See Auditor General v. Sloman, 84 M. 118; State Tax Law Cases, 54 M. 350.

Not ground for setting aside decree of sale that there was not sufficient time between final publication and time fixed for hearing for non-resident land owner to reach a place of trial from his place of residence.—Waldron v. Auditor General, 109 M. 231. Decree void as to those who did not appear or waive the right for further time where the court entered decree on the day following the day fixed for appearance and adjourned the term, it being held that this was in violation of the provisions of this section.—Peninsular Savings Bank v. Ward, 118 M. 87.

Full statutory time for objections must be given. See notes to Sec. 139. All cases relative to the five days required by the section before amendment are equally applicable to the two days under the amended section.

Objections must set forth descriptions, and if only part of the taxes are claimed to be illegal, such information should be furnished the court as to enable it to separate the legal from the illegal. See Conway v. Township Board, 15 M. 257.

In Richmond v. Circuit Judge, Mich. Mandamus Cases 557, mandamus to vacate order striking relator's objections from the files because copy was not served upon the prosecuting attorney ten days prior to the commencement of the term was denied. This and the following were before amendment providing that objections may be served on prosecuting attorney on or before day of hearing.

In Walsh v. Circuit Judge, Mich. Mandamus Cases 554, an order to show cause why an order of the circuit judge overruling prosecuting attorney's objections to the consideration of the defendant's answer on the ground that no copy of answer had been served on relator ten days prior to the first day of term should not be set aside, and also to set aside an order dismissing the proceedings because the order of hearing published lacked the seal of the court and because there were no dollar marks at the head of the columns of the published lists, was denied, it appearing that the circuit judge held the objections made to the proceedings good "for the purpose of having the determination by the supreme court." The court held that the circuit judge should have passed upon each of the points raised upon its merits; that the questions were more properly reviewable on appeal, and that the supreme court does not feel called upon to review questions arising during the course of a proceeding, at least until the final judgment of the court below has been given after full consideration.

In Johnson v. Circuit Judge, Mich. Mandamus Cases 702, order to show cause why mandamus should not issue to vacate order holding that in the answer to a petition there are no specific allegations sufficient to raise an issue was denied. In Auditor General v. Circuit Judge, Mich. Mandamus Cases 718, mandamus to compel respondent to vacate an order setting aside assessment against certain lands for certain taxes was denied, it appearing that the order was made upon its being shown that there was no proper record of equalization and because of other invalidity in the assessment.

HEARING: A mere mistake of judgment of the assessing officer is not reviewable.—Peninsula Iron Co. v. Crystal Falls, 60 M. 79. Title of de facto officer cannot be tried in hearing of petition for decree.—Auditor General v. Longyear, 110 M. 223. In hearing on petition for decree the allowance of an amendment to objections filed specifying objections more in detail is within the discretion of the court and will not be reviewed.—Auditor General v. Chandler, 108 M. 569. Petition is filed against the lands and no personal decree can be entered against the tax-payer (except for costs against the person contesting; see last part this section). Answer of fraud to petition filed must specify the acts claimed to be fraudulent and whether of supervisor or board of review. Excessive assessment is not sufficient evidence of fraudulent or corrupt conduct on the part of the assessor or board of review.—Auditor General v. Stiles, 83 M. 460. The absolute illegality of a tax may be shown in proceedings to enforce it and it cannot be cured by proof that if the valuation had been correct the tax would have been legal.—Blanchard v. Powers, 42 M. 619.

Where a tax-payer fails to appear before board of review he is bound by the assessment as made and cannot in the absence of fraud be heard to complain.—Smith v. Carlow, 114 M. 67. One who allows work of extending drain to go on with full knowledge that he is to be assessed therefor and that it must be paid for by an assessment for benefits, is estopped from restraining the collection of the tax.—Atwell v. Barnes, 109 M. 10. Owner who, having full knowledge personally and through his agent that a street improvement is to be made and that his lands are to be assessed therefor, allows the improvement to be completed and the contractor to be paid out of the proceeds of the bonds issued by the city in anticipation of the collection of the assessment without making any objection thereto, cannot thereafter maintain a bill to restrain the collection of the assessment on the ground of irregularities therein.—Fitzhugh v. City of Bay City, 109 M. 589.

Property owner having knowledge of proceedings in matter of special assessment cannot maintain an action in equity to set them aside after half the tax for the improvement has been paid and a large part of the work been done.—Moore v. McIntyre, 110 M. 227.

Where one had joined in releasing right of way, had bid for part of the work and did not file his bill until all but himself and another had paid the tax, his bill to enjoin the collection was dismissed for laches.—Harwood v. Drain Commissioner, 51 M. 639. The collection of a paving tax will not be enjoined where the complainants have allowed the contractor to go on with the work without asking for relief and have reaped the benefit, with full knowledge that their lands were so situated that any assessment therefor would include said lands.—Lundbom v. City of Manistee, 93 M. 170. Land owners after standing by and permitting the construction of a drain without taking any steps to test the validity of the proceedings are estopped from thereafter denying the regularity of the proceedings.—Township of Walker v. Thomas, 6 Det. Leg. News 1041.

In the absence of express charter provision for the entry of estimate on the record of common council, courts will not for the purpose of invalidating a municipal tax assume that no estimates were made from the fact that no entry thereof appears on the record.—Auditor General v. Hutchinson, 113 M. 245. A conveyance of land to trustees to secure an indebtedness is only a mortgage and does not preclude the owner from claiming the title in fee and seeking relief against an illegal tax.—F. & P. M. Railway Company v. Auditor General, 41 M. 635.

A purely statutory lien must conform exactly to the statutory conditions; but when it once attaches and is put in process of foreclosure the proceedings, while in part definitely fixed, are nevertheless in important particulars left to the general course of practice. No construction should be strained at in order to defeat them, but the rights of all parties should be harmonized and respected as far as is reasonably practical.—Sheridan v. Cameron, 65 M. 680.

Questions arising during trial will not be reviewed on mandamus where decision of circuit court was made for sole purpose of obtaining ruling by Supreme Court.—Walsh v. St. Clair Circuit Judge, 107 M. 26.

Auditor General's petition and proof of publication confer jurisdiction to enter decree.—Conley v. McMillan, 6 Det. Leg. News 317.

Where the limit of a legal assessment on one's property is fixed and ascertainable, one who resorts to equity to restrain the sale of his land for a tax of which he does not dispute the legality of certain items cannot object to the whole tax on the ground that there is no provision for distinguishing between what is legal and what is not, but must offer to pay what might have been legally assessed. One who seeks to restrain the enforcement of an excessive tax without tendering what he ought equitably to pay is liable for costs; but if he concedes a certain amount to be legal and offers to pay it, his bill ought not to be dismissed, as he has a right to the judgment of the court as to the remainder of the tax.—Connors v. Detroit, 41 M. 128. Where objections alleging illegality of certain taxes did not show how much was admittedly legal and how much alleged to be illegal, or set forth any facts from which the court could make the separation, held that the collection of a legal tax would not be enjoined in order to reach an illegal one under those circumstances. Whenever party concedes that a portion of his taxes are just, but disputes another portion, he is not entitled to the interference of equity to stay the execution of process unless he pays or offers to pay the legal part.—Palmer v. Township of Napoleon, 16 M. 176.

The law contemplates and provides for collection of both general and special taxes by chancery proceedings under the law. The burden is upon the owner to show the illegality of the tax, the presumption being in favor of its validity.—See Auditor General v. Maier, 95 M. 127; Auditor General v. Smith, 95 M. 132. On petition for decree, when court finds no lawful equalization, the decree should reject only that part of the tax subject to and dependent upon equalization and should not apply to township, school or other taxes not affected by failure of equalization.—Auditor General v. Gurney, 109 M. 472. It is permissible to assess platted lots together in certain cases and decree entered as against one parcel is a determination of the legality of the proceedings.—Kneeland v. Hull, 116 M. 55.

FINAL DECREE: Failure to make final decree 10 days prior to the time fixed for sale will not render decree and sale void, defect being cured by Section 99.—Hooker v. Bond, 118 M. 255. The provision is directory.—Barnum v. Barnes, 118 M. 264.

All questions as to the validity of a tax upon lands are foreclosed by a valid decree for the sale of the lands for non-payment of the taxes.—Hall v. Mann, 118 M. 201; Spaulding v. O'Connor, 5 Det. Leg. News 697. Questions affecting proceedings anterior to the decree are cut off by the decree.—Wilkin v. Keith, 6 Det. Leg. News 305.

Decree properly signed and countersigned, entered in chancery record with date of filing appended, but no decree found in files and no calendar entry of decree. Held, sale thereunder not invalidated by omission in filing and calendar entry.—Spaulding v. O'Connor, 5 Det. Leg. News 697.

Proceedings under a void decree would not affect subsequent regular proceedings.—Wilkin v. Keith, 6 Det. Leg. News 305. Prior decree setting aside the taxes may be relied on in cases where lands are included in decree of sale by reason of former decree not having been reported to Auditor General.—Thomas v. Moore, 6 Det. Leg. News 265.

ENTRY OF AMOUNTS DECREED: Failure of register to carry out in Tax Record under the head "Amount decreed against land," the amount fixed by the court renders decree void which was entered before the blank was filled.—Morgan v. Tweedle, 5 Det. Leg. News 820. Filling in the Tax Record the amounts decreed against the land after the signing of decree and by an employe in the county treasurer's office renders subsequent sale and tax title void.—First Baptist Church v. Roberts, 6 Det. Leg. News 369. The validity of a tax deed may be attacked in a collateral proceeding by showing that the decree was void in failing to show an adjudication of any sum of money against the land.—Case v. Skinner, 6 Det. Leg. News 409.

The entry in the Tax Record of the amounts decreed against the several descriptions is to be made by the county clerk and this should be done as soon as the court determines the several amounts. At the time of making any special orders, such orders must be entered in the Tax Record and signed or initialed severally by the judge.

See Secs. 67, 70, 99.

SEC. 67. (3890) Am. Act 262 of 1899. Such final decree shall be entered in the chancery record for recording decrees of such court, have the usual caption for decrees, and shall be substantially in the following form: Record of decree.

Form.

"STATE OF MICHIGAN,
The Circuit Court for the County of.....} In Chancery.

At a session of said court held at the court house in the .....of.....on the.....day of.....A. D. 18....

Present: Hon.....Circuit Judge.

In the matter of the petition of....., Auditor General of the State of Michigan, for and in behalf of said State, for the sale of certain lands for taxes assessed thereon:

The said petition and the matters therein stated, and the objections filed to certain taxes therein claimed (if any such objections are filed) came on to be heard, and proof of the due publication of the order of hearing, and of said petition having been made and filed, and after hearing all parties interested therein: It is ordered, adjudged and decreed that the amount of taxes, interest, collection fee, and charges set down in the column headed 'Amount decreed against lands,' in the Tax Record of which said petition forms a part, are valid, and decree is made in favor of the State of Michigan therefor against each parcel of said land for the amount set down in said column opposite to such parcel. It is further ordered, adjudged and decreed that said several parcels of land, or such interest therein as may be necessary to satisfy the amount herein decreed against the same, shall be severally sold as the law directs, on the.....day of May, A. D. 18.... beginning at ten o'clock a. m. on said day, or on the day or days subsequent thereto as may be necessary to complete the sale of said lands and of each and every parcel thereof, at the office of the county treasurer, or at such convenient place as shall be selected by him at the county seat of the county of..... State of Michigan. It is further adjudged and decreed that the several special orders made by this court, and entered on said Tax Record, are made a part hereof, with the same effect as if entered herein.

.....
Circuit Judge.

(Countersigned)

.....Register in Chancery."

Execution for costs.

Judge and clerk to sign decree.

Copy of decree annexed to Tax Record.

Tax Record, where kept.

Continuance of hearing.

If costs are adjudged against any person contesting a tax, the decree therefor shall be in proper form and execution awarded. The decree shall be signed by the judge and countersigned by the clerk. Immediately after the entry of such decree, the county clerk shall make a certified copy thereof, and annex the same to the tax record. He shall thereupon deliver such tax record to the county treasurer, in whose office the same shall remain, except as needed in the office of the county clerk. If from any cause the hearing on said petition is not had on the day fixed in the notice therefor, the same shall stand continued from day to day during the term without the entry of any order of continuance, until disposed of, and if it shall for any reason be found impracticable to hear and determine the objections to all of the taxes specified in such petition within

the time herein fixed for that purpose, then and in that case the court shall, within the time herein named, make a final decree as to all taxes to which no objections have been filed, and also those to which objections have been filed, which the court has then heard and passed upon. Such decrees shall be signed and recorded as herein before provided. The court shall proceed with the consideration of the remaining taxes embraced in such petition, and objections thereto, and as soon as practicable dispose of the same by one or more decrees and in such form as the court may determine, which shall be entered in the chancery record of decrees of such court, and the same shall describe the lands and specify the total amount of taxes, interest and charges on each parcel thereof. The county clerk shall immediately thereafter deliver to the county treasurer a certified copy of such decree, to be kept and used as herein-before provided. Such copy of decree shall be annexed to the Tax Record and shall thereby become a part thereof. If from any cause no decree shall be made on such petition as to the taxes therein named, or any part thereof, the Auditor General shall, as soon as practicable, file a new petition for decree and sale, and proceedings thereon shall be the same and a decree and sale made as herein provided.

Final decree.

Supplemental decrees.

Copy of decrees to be annexed to Tax Record.

In case a decree is given in favor of the validity of any disputed tax, and the person contesting its validity desires to appeal to the supreme court, he shall be allowed to do so on paying the amount of the decree to the county treasurer, within ten days after the date of such decree, who shall retain the same until the decision of the supreme court, and pay the same to the party interested, if such tax is held invalid; if held valid, then such money shall be credited to the proper fund. By such payment the land in question shall be discharged from the lien of the tax. In case the decision is against the validity of any tax, either the county treasurer or the Auditor General shall have a right to direct an appeal therefrom to the supreme court on behalf of the State, but there shall be no sale for the tax held invalid, until such decision has been reversed or modified by the supreme court.

Appeal of contestant.

Payment condition precedent.

Appeal of Auditor General or county treasurer.

The proceedings where the validity of any tax is in dispute shall, where no other provision is made herein, follow the ordinary chancery practice, and the court may allow amendments as in ordinary cases. Notice shall be given of all appeals to the supreme court, and such appeal shall be claimed, entered and bond for costs given, within twenty days after the making and entering of the decree. When the appeal is taken in behalf of the State, no bond shall be required. The judge shall, at the request of either party and on due notice, settle in proper form a case containing so much of the record and proceedings as may be necessary to the due understanding thereof by the supreme court, and if appeal shall be taken, such case shall be transmitted to such court. An appeal as to the tax on any parcel shall not delay or affect the proceedings for the sale of any land on which there has been no appeal.

Chancery practice.

Bond on appeal.

Settlement of record on appeal.

DECREE: Surplusage in entitling does not invalidate decree.—Muirhead v. Sands, 111 M. 487. Where statutory decree is signed by judge, countersigned by clerk and entered in chancery record, the statute in that regard is fully satisfied.—Jenkinson v. Auditor General, 104 M. 34. The questions whether there is a tax due, whether it was properly assessed, and whether proper steps have been taken to charge the land after assessment, are concluded by the decree.—Muirhead v. Sands, 111 M. 487. Questions as to validity of tax and regularity of assessment and levy are foreclosed by decree.—Ball v. Ridge Copper Co., 118 M. 7. Objection that no certified copy of decree was affixed to Tax Record will not be considered first on appeal.—Hooker v. Bond, 118 M. 255. Decree need not repeat descriptions, the Tax Record being part thereof.—Barnum v. Barnes, 118 M. 264. Omission in Tax Record of dollar mark or any word or sign to show what figures in decree mean is fatal to sale thereunder.—Millard v. Truax, 99 M. 157.

CONTINUANCE: Continuance beyond the term can only be by an order duly made and entered, and failing to so make and enter order the court loses its jurisdiction until a new petition is filed.—Muirhead v. Bergland, 111 M. 655. Continuance as to particular descriptions, and to a date subsequent to the sale, makes sale impracticable until the next annual sale. For this reason it is very generally desirable that, if the order sustains the tax it provide that if payment is not made before the next petition is filed it be included therein and decree of sale taken when that petition is heard.

TAX RECORD, ETC.: County treasurer's office shall be at the county seat.—Sec. 4, Art. X, Const.; 2547 C. L. '97. See Rice v. Shay, 43 M. 280. "County clerk" and "register" interchangeable terms and mean the same officer. Provision as to Tax Record being in county treasurer's office is not unconstitutional. The court can re-possess itself of Tax Record at will. That the Tax Record is to be delivered to the county treasurer, etc., does not render the act unconstitutional as relieving the court from the necessity of entering a complete decree to be retained in its own custody, since the court may at any time repossess itself of the Tax Record.—Mersereau v. Miller, 112 M. 103.

When the Tax Record is delivered to the county treasurer he should see that it contains certified copy of the decree of sale and that the county clerk has entered in the proper columns the several amounts decreed and all special orders of the court.

Neither the original decree, the affidavit of publication, nor any other paper belonging in the county clerk's office can be filed in the Tax Record. They must be retained by the clerk.

No county, city or township books, records or files shall be removed from the office of the custodian thereof without an order of the judge, etc.—Act 92 of 1899.

APPEAL: Appeal from decree in tax proceedings is properly dismissed for failure to comply with the usual rules of equity practice.—Carney v. Baldwin, 95 M. 442. Where owner contesting a tax in proceedings for enforcement fails to raise the objection that two contiguous parcels should have been assessed separately, he is estopped from such objection on appeal granted in such case.—Auditor General v. Maier, 95 M. 127. In Lange v. Circuit Judge, Mich. Mandamus Cases 922, order to show cause why mandamus should not issue to vacate an order granting a re-hearing after the time for appeal had elapsed, where the petition for re-hearing was without the certificate of counsel as required by Rule No. 81 and the court at the hearing thereof allowed such certificate to be filed nunc pro tunc, and where such certificate is that of the counsel who appeared for the petitioner, was denied.

A point not raised below will not be considered for the first time on appeal.—City of Menominee v. S. K. Martin Lumber Co. 5 Det. Leg. News 771. On an appeal to review the legality of a tax assessment paid under protest only the ground mentioned in the protest will be considered.—Aurora Iron and Mining Co. v. City of Ironwood, 5 Det. Leg. News 828. The Supreme Court will not reverse an order or decree in chancery for a mere irregularity not affecting injuriously appellant's interests.—Kellogg v. Putnam, 11 M. 344.

Where payment of the taxes is made on appeal as provided in this section the county treasurer is not to make duplicate tax receipt for the taxes until the appeal is decided, but may give the payer a receipt for the amount. If the taxes are finally sustained he should then make duplicate receipts in the usual form, under date of the original payment, taking up the receipt first given and sending the regular duplicate to the Auditor General at once.

ENROLLMENT: Sec. 463-4 C. L. '97. Exact compliance with the rule for enrollment is impossible, but a certified copy of the printed petition, including the list of lands and taxes, may be used in lieu of the original petition (the Tax Record). In this way it would appear to be practicable to enroll the case, and this should be done as soon as the files are complete, including the report of sale, the order of hearing, the proof of publication and the decree or decrees made by the court.

Tax sale is not rendered void by non-enrollment of decree before sale, the general statute not being applicable to the tax proceedings.—Youngs v. Peters, 118 M. 45; Hall v. Mann, 118 M. 201; Hooker v. Bond, 118 M. 255; Barnum v. Barnes, 118 M. 264; Shefferly v. Auditor General, 6 Det. Leg. News 240. But court may amend decree after the term at which it was entered before enrollment, and no bill of review is necessary in such case.—First Baptist Church v. Roberts, 6 Det. Leg. News 364.

See Secs. 66, 70, 99, 100.

SEC. 68. (3891) If for any reason the treasurer of any county shall fail to offer the lands lying therein and included in the decree for sale for delinquent taxes thereon, then so many of such lands so included in such decree as shall not be so offered for sale, shall be considered and treated as if bid off to the State by the county treasurer, and shall be subject to redemption and sale in the same manner and within the same time as may be provided by law in the case of lands actually bid off for the State as provided in this act. All lands bid off for the State as provided in this section shall continue liable to be taxed in the same manner as if not held as belonging to the State, and all such taxes shall be a charge and lien upon such lands as in case of other tax lands, except as hereinafter provided. State bids. State tax lands taxable.

Lands acquired by state under this section may be sold under Section 84.—Mann v. Carson, 6 Det. Leg. News 288.
If the Auditor General's instructions for the sale are carefully observed there will be no lands that are not sold individuals or bid to the state before the sale is closed.

SEC. 69. (3892) Whenever it shall be satisfactorily shown to the court that any lands included in such petition as delinquent for taxes shall belong to infants, minor heirs, idiots or insane persons, without guardians or without any other means of support, the court is, in his discretion, authorized to withhold such lands from sale, until a settlement of such person can be made, and a guardian chosen or appointed to protect the rights and interests of such person: *Provided*, Such withholding shall not act to prejudice the lien of the State, county or township for such taxes, or the right to include the same in any subsequent petition for sale as in this act provided. In case of the sale of lands belonging to any infant, idiots, minor heirs, insane or incompetent persons, if it shall appear to any court that it is necessary to protect the rights of such incompetent person, to order any sale canceled, or deferred, it may so order, and in such case all proceedings may be stopped, sale canceled or action stayed until the proper proceedings can be had to protect the rights and property of such incompetent person or persons. Lands of incompetent persons. Proviso. Cancellation, etc., of sale.

Section applies to incompetents not under guardianship.—Foegan v. Carpenter, 117 M. 89. As to infants rights see Ballentine v. Clark, 38 M. 395.
Laches in filing bill to establish his rights is not imputable to a minor nor to any person incompetent to act in his own behalf.—Dragoo v. Dragoo, 50 M. 573. See Sirr v. Miller, 6 Det. Leg. News 585.

OF SALE BY COUNTY TREASURER.

SEC. 70. Am. Act 225 of 1897. (3893) Am. Act 262 of 1899. On the first Tuesday of May, beginning at ten o'clock a. m., the county treasurer shall commence the sale of the lands mentioned in the decree upon which the amounts charged shall not have been paid, and shall continue the same from day to day, Sundays and other legal holidays excepted, until so much of each parcel shall be sold as shall be sufficient to pay such amounts. Each parcel described in the decree shall be Sale of delinquent lands.

Each parcel to be separately offered.

Sale of smallest interest.

Sale at county seat.

Immediate payment required.

Penalty for non-payment.

Re-offer of unsold parcels.

State bids for several interests.

Taxes and charges continue a lien.

Entry of sale, etc., in Tax Record.

Certificates of sale.

Report of sale.

separately exposed to sale for the total taxes, interest and charges, and the sale shall be made to the person paying the full amount charged against such parcel, and accepting a conveyance of the smallest undivided fee simple interest therein. No greater interest in any parcel shall be sold than is sufficient to pay the amount of the tax on which the same is sold. If no person will pay the several taxes and charges and take a conveyance of less than the entire thereof, then the whole parcel shall be offered and sold. The sale shall be at the county seat, at the office of or at such convenient place as shall be selected by the county treasurer, and shall be subject to the taxes assessed subsequent to taxes included in the decree and for the year for which the sale is made. The county treasurer may, in his discretion, require immediate payment of any person to whom any parcel of such land may be struck off, and in all cases where payment is not made in twenty-four hours after sale, he shall declare the bid canceled and sell the land again; and any person to whom any parcel of land shall be so struck off neglecting for twenty-four hours after the close of such sale to pay to the county treasurer the amount of such bid, shall forfeit to the State five times the amount of such bid, and costs of suit therefor, which amount may be recovered in the name of the people of the State of Michigan in an action of debt, in any court of competent jurisdiction, and it shall be the duty of the county treasurer and prosecuting attorney of the county to prosecute for all such delinquencies and penalties without unnecessary delay. Any subsequent bid of such person made at the sale may be disregarded by the treasurer. If any parcel of land cannot be sold for taxes, interest and charges, such parcel shall be passed over for the time being, and shall, on the succeeding day, or before the close of the sale, be re-offered; and if, on such second offer, or during such sale, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same in the name of the State, for the State, county and township, in proportion to the taxes, interest and charges due each. And in such case the taxes assessed on the lands so bid off to the State, and the interest and charges thereon, shall remain a lien upon said lands, and any person or persons may thereafter purchase such lands of the State, as State tax lands or otherwise, as provided in this act. The county treasurer shall enter in the proper columns of the Tax Record the interest in lands sold, the name and postoffice address of each purchaser opposite each parcel of land sold, and the word "State" opposite each parcel bid off in the name of the State. Certificates shall be given to each purchaser of the lands and interests bid off by him, showing the year's tax for which he has purchased, and also the amount thereof, and of all charges paid by him at the time of such purchase, stating that he will be entitled to a deed after the period of redemption provided for in section seventy-four has expired, and that if the sale is not confirmed the money will be returned. As soon as possible after the conclusion of any sale, and within

twenty days after the day named in the notice for the commencement thereof, the county treasurer shall make and file with the clerk of the court a report of such sale, therein referring to the Tax Record for the particulars thereof. All sales shall stand confirmed, subject to the right of redemption provided for in section seventy-four, unless objections thereto are filed within eight days after the time limited for filing such report, without the entry of an order or further notice. The practice with reference to setting aside such sale shall be the same, so far as applicable, as in a sale in equity on the foreclosure of morigages: *Provided*, No sale shall be set aside for inadequacy of price, except upon payment of the amount bid upon such sale, with interest and costs: *Provided further*, That no sale shall be set aside after confirmation, except in cases where the taxes were paid, or the property was exempt from taxation. In such cases the owner of such lands may move the court at any time within one year after he shall have notice of such sale to set the same aside, and the court may so order upon such terms as may be just. As soon as practicable after sales are confirmed, the county treasurer shall make full report of the same to the Auditor General, in such form as the Auditor General shall prescribe, giving a description of the property sold, the amounts for which the same was sold, and the names and address of the purchasers, and thereupon the Auditor General shall, after the period of redemption provided in section seventy-four has expired, execute deeds to the purchasers in such form as shall be determined by him. All lands bid off in the name of the State shall continue liable to be taxed in the same manner as if they were not the property of the State, except as hereinafter provided. If from any cause the lands, or any parcel thereof decreed for sale by the Auditor General, shall not be sold as advertised, it shall be the duty of the Auditor General to cause sale to be made at such other time as he may fix for that purpose, of which notice shall be published at least four weeks prior to such day, and such notice shall contain a description of the lands and the amount claimed thereon, as hereinbefore provided in the first instance. The sale and all proceedings thereon shall be the same as if made on the first day fixed therefor: *Provided*, That if any parcel sold under the provisions of this section shall also be offered at the same sale as State tax lands, the purchaser must also at the same time become the purchaser from the State tax land list, and pay the taxes, interest and charges remaining unpaid thereon, for all years for which such land is held as State tax land. All sales made in contravention of this requirement shall be void. The several county treasurers shall receive on such sale only such funds as shall be receivable at the State Treasury, and all moneys received at any tax sales that belong to the State shall be paid into the State Treasury, and the expenses of advertising and sale shall be paid therefrom on the warrant of the Auditor General, and the remainder shall be placed to the credit of the general fund.

Confirmation.

Sales set aside.

Proviso.

County treasurer to report to Auditor General.

Auditor General to issue deeds.

Lands bid to State taxable.

Unsold lands readvertised.

Purchaser shall also take from State tax land list.

Void sales.

Money receivable.

Proceeds paid to State treasury.

Payment of expenses.

In all proceedings to collect the taxes after they are returned to the Auditor General or to sell the lands to enforce payment, the county treasurer is the agent of the Auditor General and does not act as a mere county officer.—Palmer v. Rich, 12 M. 414. See Secs. 93-4. But in conducting tax sales is not acting as agent of the State in such a sense as to put his action in this regard outside his official duties as treasurer and thereby make the loss by his default in accounting for the moneys received by him on such sales that of the State and so not chargeable to the county under the statute.—Attorney General v. Supervisors St. Clair Co., 30 M. 388. The statute imposes upon the Auditor General the entire authority and control over the sale of lands delinquent for taxes. The county treasurer in making the sale acts under his direction.—Clark v. Mowyer, 5 M. 462. The Auditor General cannot directly or indirectly postpone tax sales beyond the date fixed by law.—Houghton Co. v. Auditor General, 41 M. 28. If on re-offer before close of sale it is found impossible to sell, land may then be bid to State; not necessary that sale be kept open 20 days.—Barnum v Barnes, 118 M. 264. But such re-offer should not be until after the first offer has been made of the entire list of descriptions, and in no event before the second day of sale.

In Taylor v. Snyder, Walker's Chan. Rep. 490, party interested in certain land attended tax sale, but was prevented from buying by the fraudulent conduct of one to whom the land was struck off, but who failed to pay. On a subsequent day, in the absence of the interested party, the sale was made to another, in privity with the one to whom sale was first made. Held, that in a bill to have the sale declared fraudulent and void it was not necessary to offer to refund the money paid by the purchaser for the tax title fraudulently obtained by him, and that he must lose what he paid.

WHO MAY PURCHASE: See notes to Secs. 72 and 84. Purchase by mortgagee.—Fells v. Barbour, 58 M. 49.

A book kept by a county treasurer containing statements of various tax sales, the names of the purchasers and other items connected therewith, though not such a book as was distinctly required by any statute to be kept, held to be an official book and admissible as evidence to prove the facts therein stated.—Groesbeck v. Seeley, 13 M. 329.

Order of confirmation not necessary to the validity of sale. Owner not having moved to set aside sale within eight days provided for confirmation cannot thereafter in a collateral proceeding attack the sale on the ground that treasurer's report to the court did not show that the land had been offered a second time before it was bid to the state.—Hilton v. Dumphy, 113 M. 241. Sale stands confirmed without the entry of an order unless objections are filed within the statutory period.—Conley v. McMillan, 6 Det. Leg. News 617.

REPORT TO CLERK: Failure of county treasurer to make and file report of sale invalidates sale.—Millard v. Truax, 99 M. 157. Report of sale lacking details, but referring to Tax Record, etc., held sufficient.—Jenison v. Conklin, 114 M. 9. Report of sale when filed with clerk, where statute contemplates it is to remain, operates as notice to all concerned, but cannot be regarded as thus filed when it is attached to the Tax Record. Although filing report is a condition subsequent to the sale, such filing, for the purposes of giving effect to the deed and the vesting of title, must be treated as a condition precedent. Purchaser is bound to see the law has been complied with. Report of sale cannot be amended after period of redemption has expired.—Jenkinson v. Auditor General, 104 M. 34. Curative provisions of Section 99 do not apply to failure to file report.—McFadden v. Brady, 6 Det. Leg. News 283.

REPORT TO AUDITOR GENERAL: Report to Auditor General dated on day fixed for sale is erroneous; should be dated on conclusion of sale; but defect was cured by confirmation. No precise time is fixed for making report to Auditor General and report made ten days after confirmation held to be within reasonable time.—Detroit F. & M. Ins. Co. v. Wood, 118 M. 31. County treasurer has a reasonable time in which to make his report to Auditor General.—Youngs v. Peters, 118 M. 45.

Parties having rightful possession of land may before the time of redemption expires lawfully take from the premises whatever the removal of is not injurious to the freehold. As to what constitutes waste, see Ward v. Carp River Iron Co., 47 M. 65; Webster v. Peet, 97 M. 326.

ACTION TO SET ASIDE: A much stronger case must be made to set aside a sale under a decree in chancery after confirmation of the report of sale than before.—Bullard v. Green, 10 M. 268. A purchaser under decree must ascertain at his peril whether the decree was warranted or not, and though the time for appealing from the decree had expired when he purchased, he cannot claim immunity from the effects of a subsequent order without notice to him setting the decree aside as unwarrantably entered.—Ritson v. Dodge, 33 M. 463. Purchaser at a judicial sale must be considered as having submitted himself thereby to the jurisdiction of the court as to all matters connected therewith; and when he has notice of a motion to set aside the sale, and in answer thereto appears and without objection goes to a hearing on the merits, he is not in a position to afterwards object to the power of the court to decide such motion.—Blair v. Compton, 33 M. 414. Payment or offer of so much of the tax as is equitable must be made before proceedings to vacate the sale. A bill in equity will not lie to set aside a sale because of non-jurisdictional irregularities that work no injury. —Sinclair v. Learned, 51 M. 335. In Wiley v. Circuit Judge, Mich. Mandamus Cases 710, order to show cause why mandamus should not issue to compel respondent to re-open a decree (in June, 1891) after sale made in May, 1890,

and allow relator to file answer was denied. Claim not included in petition filed to set aside sale cannot be considered on appeal.—Hall v. Mann, 128 M. 201.

If the taxpayer petitions the court in chancery in the Auditor General's proceedings to foreclose a lien the court will compel him to do equity.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444.

Provision and that in Sec. 98 are concurrent.—Wood v. Bigelow, 115 M. 23; Kneeland v. Wood, 117 M. 174. Sale will not be vacated for the reason that the property is valuable and the amount of the taxes is small.—Nester v. Church, 6 Det. Leg. News 284.

In direct proceeding to set aside an irregular decree the rule that "a record is conclusive evidence of its own verity" is not applicable.—Wilkin v. Keith, 6 Det. Leg. News 305.

Equitable relief.—See Albany & Boston Mining Co. v. Auditor General, 37 M. 391. One who seeks relief from a void tax sale in a court of equity will be compelled to do equity.—Connecticut Mutual Life Insurance Co. v. Wood, 115 M. 444. Bill in chancery to impeach decree establishing title must be brought within a reasonable time.—Campau v. Van Dyke, 15 M. 371. No ground for setting aside decree of sale that there was not sufficient time between final publication and time fixed for hearing for non-resident land owner to reach place of trial from his place of residence.—Waldron v. Auditor General, 109 M. 231.

A court of chancery has no power to open a decree in tax proceedings for mere irregularities of procedure upon a petition filed after confirmation of sale.—Spaulding v. O'Connor, 5 Det. Leg. News 697. A chancery judge has no authority to grant leave to file a bill of review for the purpose of setting aside a tax sale after confirmation of the sale, unless a total want of jurisdiction to make the decree is shown or one of the two causes mentioned in Sec. 70 of the tax law exists, and the hearing must be confined to these causes.—Berkey v. Burchard, 5 Det. Leg. News 723; Brooks v. Roche, 5 Det. Leg. News 811.

Where a land owner with full knowledge of all the proceedings permits his land to be sold for dilinquent taxes and allows two years to elapse without taking any steps provided by law to test the validity of the proceedings, he cannot thereafter, and after third parties have become interested in products severed from the land, file a petition to reopen the decree entered in the original proceedings.—Cook v. Hall, 6 Det. Leg. News 1070.

Proceedings in chancery for the sale of lands delinquent for taxes on petition of the Auditor General are pursuant to a special and limited authority conferred by the statute and the rule which obtains in cases which fall within the ordinary jurisdiction of chancery courts that if the court has jurisdiction of the parties and the subject matter its decree though erroneous is binding until set aside, is not applicable to such proceedings.—Wood v. Bigelow, 115 M. 123.

A sale made by the Auditor General under the provisions of the tax law of 1899 will not be vacated in a direct proceeding solely on the ground that the report of sale failed to show that the land was re-offered for sale as provided by Sec. 62 of the tax law of 1889, where affidavits were presented to the effect that the sale was properly made and there was no proof offered to the contrary.—Dumphy v. Auditor General, 6 Det. Leg. News 1045.

See Secs. 72, 80, 106, 144.

RULES FOR SALE: The following are among the rules prescribed by the Auditor General for the annual tax sales by county treasurers:

At each adjournment public announcement should be made of the hour to which adjournment is had, but no adjournment should be made beyond the day following the day on which adjournment is had, except that adjournment from Saturday should be to the following Monday.

The sale should be concluded as soon as is practicable, but in no case should final adjournment be had until every description on the Tax Record (not withheld from sale) has been offered, and until such descriptions on the Tax Record as have not been sold on the first offer have been reoffered on a day subsequent to the day on which they were first offered, and in the same manner, and until each description on the State tax land list has been so offered and reoffered. When all this has been done the sale should be closed and reported.

No sales can be made except at public sale. County treasurers have no authority to sell, either from the Tax Record or the State tax land list, at private sale, and sales so made would be viodable, if not actually void. No valid sales can be made by county treasurers before the sale opens, during any adjournment, or after the public sale is closed.

The descriptions found in the Tax Record and not withheld from sale are to be offered first, except where any description or any part thereof is held on the State tax land list, in which case the description so held must be sold from the State tax land list at the same time as from the Tax Record, and to the same buyer.

Where a description is offered for sale and is bid to nothing, do not issue a certificate of sale, but treat it as a payment of the taxes and issue duplicate receipts.

When a parcel of land is advertised and is on the Tax Record for taxes of more than one year, do not sell for either year unless the bidder also purchases for the taxes of all years on said Tax Record.

In case objections to the confirmation of sales are filed within the time limited, entry on the original Tax Record should be made by the county clerk.

Sell each description as decreed, unless a part of the description is with-

held from sale in accordance with a special decree of the court or upon instructions from this department, or the taxes thereon are paid, in which case you will offer the balance.

In no case shall any description be altered or amended. Sell the whole description offered to one individual, firm or corporation. If it cannot be so sold, bid the whole description to the State, after offering it a second time on the day following the day on which it was first offered, or before the close of the sale.

In all cases of sale, either to an individual bidder or to the State, enter the interest sold. If the entire interest offered is sold enter the word "entire;" if an undivided interest (less than the interest offered) is sold, enter the proper fraction denoting the undivided interest sold. The omission to enter the interest sold would be just as fatal as to omit entry of the fact of sale.

Any person purchasing a description from the Tax Record, which description, or any part thereof, is for sale upon the State tax land list, must be required to purchase the description as offered in said list, otherwise description must be bid to the State. This is imperative, and sales made in contravention thereof are void.

Do not include in any certificate of purchase several descriptions bid in by any one buyer, but make a separate certificate for each description.

Every certificate of sale must bear the same number as that by which the description is indicated in the Tax Record (or State tax land list) from which the sale is made.

The practice of permitting any one to select descriptions before or during the sale and of treating such descriptions as sold to such buyer is distinctly contrary to the provisions of law. No sale can be made from either the Tax Record or the State tax land list except as the description is offered for competition, and sold to the highest bidder, if from the State tax land list, or to the one offering to pay the taxes and charges and take the smallest undivided interest, if from the Tax Record.

Each and every parcel against which decree has been entered must be separately exposed for sale, unless paid before sale or lawfully withheld. This requirement of the law cannot be satisfied by a general offer of the list.

If sale cannot be made when the parcel is first offered, such parcel must be reoffered on the succeeding day, or on some day subsequent thereto and before the close of the sale; and such reoffer should be in the order in which unsold parcels appear in the Tax Record. Descriptions must not be bid to the State until after they have been offered at least once after they were first offered; and while a description may be reoffered on the first day of the sale, no description should be bid to the State until reoffered on the second day of the sale or later, and after each and every description on the list has been offered once.

After all unsold descriptions on the list have been reoffered, and before the close of the sale, each successive description unsold must be bid to the State.

Sale must be made for the least undivided interest, and the entire interest must not be sold unless sale to an individual, firm or corporation is impossible for a less interest than the entire; but the interest bid to the State must be the entire interest.

After sales from the Tax Record have been completed, including the sale of the same description on the State tax land list (if found thereon), then proceed to offer the remaining descriptions on the State tax land list, observing particularly in regard to all sales from said list that no bid can be accepted unless for the full amount due, and for the entire description or group of descriptions as appears on said list. Sale of undivided interest in lands on the State tax land list cannot be made, unless the description was so bid to the State.

If there is competition for any description or group of descriptions on the State tax land list, sale must be made to the highest bidder, but no bid can be accepted for less than the amount for which the description or group of descriptions is held on said list; and in such case sale can only be made for the same undivided interest for which the description was bid to the State.

If several descriptions are grouped or braced together on the State tax land list, no part of the land so grouped can be sold without purchase of the entire group, nor for less than the aggregate amounts for which all descriptions so grouped are held on said list; and sale of the entire description or group of descriptions must be made to one individual, firm or corporation. *Act 263 of 1897 is not applicable to sales made by county treasurers* at the annual tax sale.

Withhold from sale all descriptions on either list upon which the taxes have been paid to the town treasurer, twice assessed, not subject to taxation, or so incorrectly described as to have been subject to rejection when returned.

Give in the certificate of sale, and also enter in the Tax Record and the State tax land list, the *full* name and postoffice address of every individual, firm or corporation to whom you strike off a parcel of land. Do not use initials where the full name is obtainable. In case of sale to a firm enter and make certificate in the names of the individuals composing the firm and not in the firm name.

If the amount of any bid is not paid within 24 hours after it is made, cancel the sale and reoffer the description. *You may demand immediate payment*, but if you do not cancel the sale at the expiration of the time named it cannot thereafter be canceled because of non-payment. In such case you must be considered as having personally assumed the payment of the amount of the bid.

SEC. 71. Am. Act 154 of 1895 and Act 225 of 1897. (3894) At the sale aforesaid the respective county treasurers shall give to the purchasers, on the payment of the bids, a separate certificate in writing for each parcel, describing the lands purchased and the amount paid therefor, the name of the person to whom the same was issued, the number, date and amount of each certificate, and such certificate shall be regularly numbered and entered in the book kept for that purpose and designated as the tax record. Such certificate shall be in substantially the following form: Certificates of sale.

Form.

STATE OF MICHIGAN, } ss.
County of..... }

County Treasurer's Office.....A. D. 18...

I, ..., county treasurer of the county of ....., in said State, do hereby certify that I did, at public auction, pursuant to notice given as by law required, on this.....day of.....A. D. 18..., sell to..... of ....., the lands herein described, for the sum of.....dollars and..... cents, said sum being the amount due and unpaid for taxes, interest and charges on said lands for the year of our Lord one thousand eight hundred and....., that the said....., his heirs or assigns, will, if said sale stands confirmed, be entitled to a deed of conveyance of said lands, after the first Tuesday in May in the year following the sale thereof as herein evidenced, unless sooner redeemed from such sale according to law. Said lands are described as follows, with the sum for which they were sold, set opposite each description, that is to say: [Here insert description, and the amount bid therefor.]

.....
County Treasurer.

Purchaser has no title until time for redemption has expired.—Cooley on Taxation, 542. Certificate of tax purchase will cloud title if deed to be issued thereon would establish presumptive title adversely. Assignment of a certificate of tax purchase that is regular on its face is a valuable consideration.—Stoddard v. Prescott, 58 M. 542. Where record of sale and certificate issued conflict, record governs.—Kneeland v. Hull, 116 M. 55.
See Secs. 72, 115.

SEC. 72. (3895) On presentation of such certificate of sale to the Auditor General or his deputy after the expiration of the time provided by law for the redemption of land sold as aforesaid, the Auditor General or his deputy shall execute and deliver to the purchaser, his heirs or assigns, a deed of the land therein described, unless the sale thereof shall have been redeemed or annulled as by law provided, which deed shall be entitled to record in the office of the register of deeds of the proper county, in the same manner and with like effect as other deeds duly witnessed, acknowledged and certified. Such deeds shall convey an absolute title to the land sold, and be conclusive evidence of title, in fee, in the grantee, subject, however, to all taxes assessed and levied on such lands subse- Auditor General to issue deeds. Deeds entitled to record. Deeds convey absolute title.

Writs of assistance.

Loss of certificate.

Refunding of redemption.

Penalty for false affidavit.

quent to the taxes for which the same was bid off. The courts may, on application, put the purchaser in possession of the premises by writs of assistance. In the case of the loss of such certificate of sale, the purchaser or his legal representative or assignee, may file his affidavit of such loss, and that he was at the time of such loss the *bona fide* and legal holder thereof; and the Auditor General or his deputy shall thereupon execute, as aforesaid, a deed for the lands described in such certificate, if the same shall not have been redeemed, in the same manner as though it had been presented and surrendered; and if the same shall have been redeemed, on the presentation of such affidavit the money shall be paid to such person in the same manner as though the certificate of sale had been surrendered. Any person who shall make an affidavit as above required, or concerning any other matter which may be filed in the office of the Auditor General, shall be liable to the penalties of perjury for any false statement made in such affidavit with intent to defraud, upon conviction thereof, before a court having jurisdiction of the offense.

A deed of quit-claim and release of the form in common use shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.—8967 C. L. '97. Power of Auditor General to convey lands cannot be assumed from authority to sell for taxes, but must be expressly conferred by statute.—Sibley v. Smith, 2 M. 486.

Duty of grantor under Auditor General's deed to record his deed on request of grantee.—9029 C. L. '97.—Fee for recording.—11227 C. L. '97. Deputy Auditor General may sign tax deed in his own name when Auditor General is sick of necessarily absent, and the presumption in favor of official action lies in the absence of any direct showing that the Auditor General was absent or sick.—Westbrook v. Miller, 56 M. 148. See 98 C. L. '97 and Drennan v. Herzog, 56 M. 467; Fells v. Barbour, 58 M. 49. A deed to a non-existent grantee is void.—Skinner v. Mt. Clemens, 54 M. 543. Deed need not recite proceedings prior to sale.—Sibley v. Smith, 2 M. 486. The omission to record a deed does not divest grantee's title.—Smith v. Fitting, 37 M. 148. Validity of tax deed does not depend upon its being recorded when no question of priority is raised.—Fells v. Barbour, 58 M. 49. Purchaser as between himself and the owner of other lands is bound at his peril to take notice of description in his own deed, and if he or his grantees make a mistake and go on the lands of others, they must bear the consequences.—King v. Potter, 18 M. 134.

Where the words in deed adopted by Auditor General are those provided by 9015 C. L. '97; deed operates to convey title to the grantee.—Mann v. Carson, 6 Det. Leg. News 288; Dawson v. Peters, 5 Det. Leg. News 788. A tax title if valid destroys and cuts off all liens and incumberances previously existing against the land even homestead and dower rights.—Robbins v. Barron, 32 M. 36. Purchasers of tax titles take no more than the deed gives them.—Reilly v. Blaser, 61 M. 399. Sale under law of 1893 if valid operates to vest in the purchaser an absolute title in fee whether that purchaser be the state or a private individual.—Connecticut Mutual Life Ins. Co. v. Wood, 115 M. 444. One cannot maintain an action to quiet his tax title or set it up as a defense against the original owner until he has obtained his deed.—Boardman v. Boozwinkle, 6 Det. Leg. News 467.

Purchaser acquires an inchoate title subject to be defeated by redemption within the statutory period. In Stout v. Keyes, 2 Douglas 184 (a mortgage sale), held that when purchaser's title becomes absolute by the failure to redeem, it relates back to the time of the purchase and he may, therefore, after his title is thus perfected, maintain an action for injury done to the estate maliciously, and with knowledge of his rights, by the cutting and carrying away growing timber, after the purchase and before the expiration of the time for redemption, and that case is the proper common law remedy; but in Hess v. Griggs, 43 M. 397, it was held that a tax deed cannot relate back to the time of the sale for the purpose of making parties trespassers by reason of acts done on the lands before the deed was given. For some purposes such a deed may relate back to the time of the sale. In some cases the occupants of lands may be liable for waste under such circumstances.

A tax title relates back to the date of purchase for all purposes of effecting substantial justice but not otherwise.—Conn. Mutual Life Ins. Co. v. Bulte, 45 M. 113. In an action of trespass to lands where the plaintiff is not in actual possession but bases his right upon a legal title and the constructive possession claimed to be drawn therefrom, evidence of tax titles held by third persons is admissible, such titles being prima facie paramount, and therefore unless overcome, defeating plaintiff's right of action.—Tolles

v. Duncombe, 34 M. 101. A defendant in trespass who entered into possession under a tax deed and cleared up and fenced a portion of the land and planted a crop and was in actual possession, claiming under said deed, is in position to contest plaintiff's title, the deed though conceded to be void, giving him color of title to the whole premises.—Hecock v. Van Dusen, 80 M. 359. Claimant under a void tax title is not in a position to contest the title of one in possession of the land, having no interest in the equities between the parties to the action.—Loose v. Navarre, 95 M. 603.

The State does not guarantee tax titles except as statutes may provide for it, and in all other cases the purchaser must be content with such interest as he gets under his tax purchase. The State does not assume any responsibility for irregular conduct on the part of the local taxing officers; and the tax purchaser has the same means of ascertaining the legality of the tax that are possessed by any of the State authorities.—Rice v. Auditor General, 30 M. 12. A grantee is chargeable with notice of whatever appears in the chain of titles through which he claims.—Fitzhugh v. Barnard, 12 M. 104. Purchasers at public judicial sale or under a quit-claim deed usually buy at their own risk of the regularity of title.—McGoren v. Avery, 37 M. 120. Parties purchasing titles under judicial sales get only that which can be lawfully sold.—Walsh v. Varney, 38 M. 73.

Statutory provision for quieting title, 448 C. L. '97, not repealed by general tax law.—Canal and Railway Co. v. Auditor General, 79 M. 351. In action to quiet title under tax deed, if defendant desires to impeach the prima facie title set up in the bill he must set forth specifically facts which if proved would defeat the tax sale.—Wagar v. Bowley, 109 M. 388. Where taxes are a valid claim and legally assessed, but there are defects in enforcement rendering the levy invalid, cloud can only be removed on condition of payment of tax.—Hamilton & Merryman Co. v. Township of L'Anse, 107 M. 419. Assignee of mortgage made by one in possession under tax deeds which are not attacked having foreclosed his mortgage has a perfect title, which cannot be detracted from by conveyance made after the tax sales by receiver to whom holder of original title conveyed the land under order of court before the tax sales.—Sherer v. Judson, 100 M. 539.

If the taxpayer is in possession and files a bill to remove a cloud from the title, the court may then compel him to do equity.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444.

In Lillie v. Snow, 118 M. 611, held that one who acquired title by tax deed and obtained possession by paying tenant a consideration, had the right to file bill under 488 C. L. '97 to quiet title.

DEED AS EVIDENCE OF TITLE: It is not within the province of the legislature to deny the right to defend title against a tax deed. The legislative intent was that the deed should be evidence of title in fee simple after the right to give the deed was shown by proof of a valid decree.—Taylor v. Deveaux, 100 M. 581. See also McKinnon v. Meston, 104 M. 642. Provision making tax deed conclusive evidence of title does not render the act void.—Ball v. Ridge Copper Co., 118 M. 7.

Tax deed is presumptively valid; its invalidity is not to be inferred from ambiguous facts or from a failure to find facts.—Stockle v. Silsbee, 41 M. 615. Sec. 72 does not purport to make the deed evidence that the sale was regular, nor does it purport to make the deed evidence, even prima facie, of the truth of the recitals contained therein. One relying upon such a deed must show a valid decree and the sale thereunder.—Dawson v. Peters, 5 Det. Leg. News 788. If the proceedings to foreclose tax liens show upon their face want of jurisdiction the deeds issued thereunder are void; but the jurisdiction cannot be attacked by evidence de hors the record.—Watts v. Bublitz, 99 M. 586.

Two tax deeds, one of which conveys to the grantee an undivided three-fourth of the land for delinquent taxes of a specified year, and the other an undivided one-third for delinquent taxes of the succeeding year, do not necessarily convey the entire title to the purchaser.—Laird v. Coach, 112 M. 628. Owner of land can maintain trover for timber by one claiming under void tax title where the possession was for the sole purpose of cutting the timber.—Moret v. Mason, 106 M. 340.

Further as to tax deed as evidence of title see Lacey v. Davis, 4 M. 140; Groesbeck v. Seeley, 13 M. 329; Wright v. Dunham, 13 M. 414; Blackwood v. Van Vliet, 30 M. 118. See notes to Sec. 77.

WRIT OF ASSISTANCE: A writ of assistance is the regular process for carrying out a decree of possession. Its object is to compel parties who are bound by a decree to give up the possession which they hold as mere tenants at sufferance and which by the decree and sale under it, they have become estopped from further asserting. A writ of assistance can never be proper where there is any real controversy as to the right of possession not precluded by the decree and sale.—Ramsdell v. Maxwell, 22 M. 285. A writ of assistance is proper only where a party concluded by the proceedings refuses to give up possession upon request, and it should not be granted without proper evidence of such refusal after the right of possession is established.—Howard v. Bond, 42 M. 131. Application for writ must be made to circuit court.—Ryerson v. Eldred, 18 M. 145.

Held error for the trial court in proceedings to set aside a tax decree instituted prior to the hearing of an application for writ of assistance to decide the case solely upon the pleadings and to refuse to allow petitioner to introduce testimony in support of the allegations in the writ of assistance.—Roberts v. Loxley, 6 Det. Leg. News 256. Purchaser of land under decree in tax proceedings cannot be compelled to resort to a court of law to gain possession and is entitled to introduce competent testimony as he desires in the case.—Beck v. Finn, 6 Det. Leg. News 635.

Where upon the hearing upon application for writ of assistance it is shown that the owner of the land has made an application to the county treasurer for a statement of all taxes against the land and had paid the amount reported by the treasurer as due for taxes, the appellate court will defer the issuance of the writ of assistance and give the owner an opportunity to make application to the Auditor General for a certificate of error, or to apply to the court if that right is not lost by the lapse of time.—Mann v. Carson, 6 Det. Leg. News 288.

Section not unconstitutional in that it deprives owner of right of trial by jury. The inquiries upon filing petition for writ of assistance are (1) whether the court had jurisdiction to render the decree; (2) whether all the steps required by the statute have been taken in making the sale, filing the report of sale, etc.; (3) whether the time for redemption has expired. The rules for the enforcement of a decree in a foreclosure proceeding are applicable to the enforcement of a decree in tax proceeding.—Ball v. Ridge Copper Co., 118 M. 7; Youngs v. Peters, 118 M. 45. Remedy against writ of assistance is by appeal. Aldrich v. Wayne Circuit Judge, 111 M. 525. See Sec. 137.

WHO CANNOT ACQUIRE TITLE: An agent who is authorized to sell property for the best price that can be obtained for it cannot become the purchaser either in his own name or that of another.—Ingerson v. Starkweather, Walker's Chan. Rep. 346. An agent for the sale of property under a contract with the owner acts in a fiduciary capacity and cannot acquire an adverse title by purchasing the premises at foreclosure sale in his own name.—Kimball v. Ranney, 6 Det. Leg. News 690. No one without express authority of law can become a purchaser of property which it is his duty to sell for the best price it will bring.—Ames v. Booming Co., 11 M. 139. The law will not permit an agent to act for himself and his principal in the same transaction, as to buy of himself as agent the property of his principal and the like. Public officers are agents within this rule.—People ex rel. Plugger v. Township Board of Overisel, 11 M. 222. See Walton v. Torrey, Harrington Chan. Rep. 259.

County treasurer conducting tax sale cannot be a purchaser. Sale conducted by clerk in office of county treasurer who represented the purchaser held void. County treasurer should not act for a purchaser because the two interests are conflicting.—Hall v. Collins, 117 M. 617. Neither the county treasurer nor his deputy can purchase at annual tax sale.—Wait v. Gardner, 6 Det. Leg. News 1001. Agent for sale of property has no right to make himself the agent of others for the purchase of the property.—Moore v. Mandlebaum, 8 M. 433.

Purchaser, if owner of interest sold acquires no title.—Legare v. Semple, 32 M. 437. One in possession of land claiming title can acquire no additional interest by suffering the land to be sold for taxes and becoming the purchaser if such taxes were a lien upon the land at the time of his taking possession; and it is immaterial whether the land is assessed to the occupant or otherwise.—Lacey v. Davis, 4 M. 140; Day v. Cole, 65 M. 129. But to preclude any person from making and relying upon a purchase of lands at tax sale there must be something in the circumstances of the case which imposes upon him a duty to the State to pay the tax or something which renders it inequitable as between himself and the holder of the existing title that he should make the purchase.—Blackwood v. Van Vliet, 30 M. 118. See also Gilman v. Riopelle, 18 M. 145.

Tenant cannot buy adverse title which existed when he received his lease and make it the basis of a suit in equity to quiet his title as against the landlord.—Ryerson v. Eldred, 18 M. 12. Tenant cannot buy tax title and set up against landlord's title.—Williams v. Powell, 65 M. 204. Life tenant cannot by neglecting to pay taxes and allowing the lien to be foreclosed, cut off the title of the remainder-man by purchasing at tax sale.—See Bowen v. Brogan, 5 Det. Leg. News 775.

When the owner of a distinct tract of land neglects to pay his taxes thereon and the same is sold jointly with the land of others for the non-payment and he becomes the purchaser of the whole, the sale is void, the purchaser being in default in not paying his own tax.—Cooley v. Waterman, 16 M. 366. When there is a bona fide controversy respecting a title and one of the claimants is in possession he owes no duty to the other to keep the taxes paid, and may therefore strengthen his claim by procuring tax titles. But if a claimant cannot rely upon a title purchased by himself, he cannot make use of one obtained by another.—Jeffery v. Hursh, 45 M. 59. A tenant-in-common who has entered upon a portion of the premises is not barred from buying the remainder of the title.—Chamberlain v. Ahrens, 55 M. 111. One who has purchased lands from a claimant under tax deeds cannot defend a suit to foreclose a purchase money mortgage given by him upon the ground that it was his duty as an administrator in possession to discharge the taxes for the non-payment of which the deeds were executed and that therefore he acquired no title and the mortgage could convey none.—Judson v. Miller, 106 M. 140.

Taxes due upon mortgaged lands are as much a lien upon the mortgaged interest as upon the equity of redemption; and where one having second mortgage allows the land to be sold for taxes and obtains a tax deed he cannot use such deed adversely to the first mortgage. It inures to the protection and not to the destruction of the regular title. Mortgagee cannot use tax title adversely to regular title.—Horton v. Ingersoll, 13 M. 409. Purchase of tax bids operates as a payment of the taxes so far as a mortgagee or his assigns are concerned.—Fells v. Barbour, 58 M. 49. Adverse tax title cannot be pleaded as a defense to a purchase money mortgage where no claim under

it has been made against the mortgagor.—Smith v. Fitting, 37 M. 148. When a mortgagee instead of making payment of the taxes purchases the land at tax sale the mortgagor may treat the purchase as a payment and compel the cancellation of the certificate or deed on refunding the amount paid with interest; but this is the right of the mortgagor only. Neither party to a mortgage can be suffered to buy at a tax sale against the will of the other and thereby cut off the other's interest; but either may bid if the other makes no objection.—Maxfield v. Willey, 46 M. 252. A tax title being purchased by mortgagee to protect the mortgage, it is proper in decree of foreclosure to provide that upon payment of the cost and interest, the tax title be assigned to the mortgagor.—Baker v. Clark, 52 M. 22.

Mortgagee cannot suffer lands to be sold for taxes and get title under the sale.—Boardman v. Boozwinkle, 6 Det. Leg. News 467. Purchase of tax title by mortgagor held merely a payment of taxes he was in duty bound to pay.—McKisson v. Davenport, 83 M. 211. Where mortgagor conveys by voluntary conveyance a mortgage containing a convenant on the part of the mortgagor binding himself and his assigns to pay the taxes the grantee cannot after having asked and obtained an extension of a mortgage defeat such mortgage by the purchase of an outstanding tax title.—Brown v. Avery, 6 Det. Leg. News 849.

Vendee of land contract who has allowed the land to be sold for taxes which it was his duty to pay, cannot interpose such sales as defense against foreclosure.—Pringle v. Wagoner, 110 M. 612. Where one enters under an arrangement with another who is in possession by virtue of a contract with the owner requiring him to pay all taxes, he can acquire no valid title to the premises as against such owner by virtue of any tax sales for taxes which under the contract it was the duty of his assignor to pay, but would hold any title thus acquired in trust for such owner.—Bertram v. Cook, 32 M. 518. The claimant of a pretented title which he had no right to retain or assert against another party is regarded in equity as holding in trust for the other party and as bound to release it to him on just terms.—Crooks v. Whitford, 40 M. 599.

An attorney of an insurance company who purchased a tax title after foreclosing a mortgage in company's name and quit-claims to company is recognized as purchasing for himself; but his subsequent action was a recognition of his agency in making the purchase.—A tenant who has covenanted to pay the taxes cannot, having neglected to do so, acquire a tax title which shall shut off the title of his landlord. Neither shall the purchaser in possession under an executory contract be allowed to cut off the rights of his vendor by like purchase, nor a mortgagor that of his mortgagee.—A second mortgagee is not bound to protect the first mortgage by payment of taxes or purchase at tax sale, but if he does so it is a protection ipso facto.—A mortgagee owes no duty to a subsequent mortgagee or to the owner to protect the party from tax liens; but all three owe a duty to the State to pay the taxes, and the State will sell the interests of all if none of them shall pay. As between themselves the primary duty is upon the mortgagor. But the purchase at tax sale in either case is only a payment of the tax.—Conn. Mutual Life Ins. Co. v. Bulte, 45 M. 113.

A tenant-in-common of lands can acquire no title to the interest of his co-tenant by bidding in the lands at a sale of the whole for delinquent taxes.—Page v. Webster, 8 M. 263; Butler v. Porter, 13 M. 292. If such co-tenant procure another person to bid in the property for him, and to take the deed, this will give him no greater right. It is the duty of the tenant-in-common in possession of and using the whole estate, to keep down the taxes on the whole during his occupancy, and he cannot take advantage of his own violation of this duty to acquire the interest of his co-tenants in the land by purchase at a tax sale. Where a tenant-in-common in possession of and using the whole estate fails to pay the taxes, and a stranger purchases the same at a tax sale, in such a manner as to be himself entitled to assert his tax title against all the owners, the purchase of such tax title by such tenant only corrects the wrong he had before committed and operates as a payment of the tax. He cannot set up such tax title against his co-tenants. Whether a tenant-in-common not in possession, and hence not under obligation to pay the taxes of his co-tenant, can purchase of a stranger who without collusion with him has acquired it on his own account, a tax title based upon the default of his co-tenant, and set it up against such co-tenant-quere.—DuBois v. Campau, 24 M. 360. As to identification of the undivided interests purchased onus is on purchaser to show what it covers.—Butler v. Porter, 13 M. 292. A purchaser from one who holds only an undivided interest in patented lands, and who enters as a stranger to the rights of his co-tenants of the other undivided interests, is not estopped from setting up against them an adverse claim that originated before his purchase, such as a tax title that arose from his grantor's default. Estoppel from purchasing a tax title lies only against those who ought to have paid the tax or removed the burden.—Sands v. Davis, 40 M. 14.

A widow who has conveyance from all but one of the heirs of her husband's estate and is in possession under such title and her statutory rights cannot acquire adverse title as to such heir by purchasing a tax title paid for by her husband's grantor, to protect his covenants of warranty pursuant to agreement made with the husband in his lifetime, nor can her grantee with knowledge of all the facts do so.—An heir cannot set up an adverse claim to land of which his father died seized, under a tax title purchased after his death and paid for by his grantor to protect his covenant of warranty pursuant to an agreement made with the father in his lifetime, such title belonging equitably to the estate.—Richards v. Richards, 75 M. 408. Sec-

ond life-tenant cannot obtain a tax title during incumbency of first life-tenant which can be set up against remainder-man.—DeFreese v. Lake, 109 M. 415. Husband in joint tenancy with his wife cannot acquire a valid tax title against her.—Ward v. Nestell, 113 M. 185.

RESULTING TRUST: In Linsley v. Sinclair, 24 M. 330, party purchasing tax title for another repudiated agency, asserted title in himself and conveyed the land. The court found that he procured title for the fraudulent purpose of appropriating it to his own use and held that the statute (see 8835 e. s. '97), providing that no trust shall result in favor of party furnishing consideration for a purchase in the name of another, does not apply to a conveyance obtained by fraud.—See also Russell v. Miller, 26 M. 1. Implied or resulting trusts may be established by proving the transaction out of which they result or are implied, and such proof may be by parol testimony.—Ripley v. Seligman, 88 M. 177.

ATTORNMENT: A tenant in possession under one title can make no valid attornment to one not in privity with that title.—Fuller v. Sweet, 30 M. 236. A tenant in fact cannot dispute the title under which he obtains possession.—Nims v. Sherman, 43 M. 45. A tenant is estopped from disputing his landlord's title during his occupancy under the lease and for any further time while he may hold over.—Bertram v. Cook, 44 M. 396. Attornment to third party in possession under writ of possession is not voluntary in such sense as to make it a wrong to original landlord.—Foss v. Van Driele, 47 M. 201. While tenant cannot during continuance of the tenancy dispute the title under which he obtained possession, he may show in summary proceedings to obtain possession of the leased premises that his landlord's title has been extinguished by a sale of the land for taxes and that he has attorned to the purchaser at such sale.—Jenkinson v. Winans, 109 M. 524. The fact that defendant in a bill to quiet title lost possession of the lands in suit through the action of complainant's agent in inducing defendant's tenant to surrender possession in order to enable complainant to maintain the bill under 448 C. L. '97, which authorizes such a suit "against any person not in possession" is no defense where defendant's title has been cut off by a valid tax deed to complainant, the defendant having the right under the circumstances to attorn.—Lillie v. Snow, 118 M. 611.

See Secs. 77, 100, 101, 140-2.

No annulment after five years' possession.

SEC. 73. Am. Act 154 of 1895. (3896) Am. Act 262 of 1899. No sale of any lands or deed made by the Auditor General under the provisions of this act shall be set aside or annulled by any court of this State after the purchaser, his heirs or assigns have been in actual and undisputed possession of such lands so sold or conveyed for a period of five years from the

Purchaser may recover for improvements.

date of such purchase or deed. Whenever any sale made under this act is set aside by any court in a less time than five years, the court shall determine and decree the value of improvements made by the purchaser, if he has been in possession, and give judgment therefor, and issue execution to collect the same of the claimant before putting him in possession.

Refunding on canceled sales.

If a sale made under this act is set aside by any court or is canceled by the Auditor General as provided in this act, the Auditor General shall refund to the purchaser the amount paid at the time of the sale, with interest thereon at the rate of six per cent per annum from the time of the purchase to the time when said sale was set aside or canceled, out of the general

Void taxes charged back.

fund of the State. In such case the Auditor General shall charge back to the county all taxes and the interest and charges thereon for all years for which it has been held that

Resale for valid taxes.

the taxes were invalid or the description erroneous, but for all years for which no invalidity has been found he shall proceed to enforce the collection of the taxes for all years refunded as herein provided, as in the case of taxes for which sale has not been made.

LIMITATIONS: Party who is to have the benefit of limitations must have entered into possession under his tax deed.—Gillman v. Riopelle, 18 M. 145; King v. Harrington, 18 M. 213. Possession must be continuous during full statutory period.—Yelverton v. Hilliard, 38 M. 355. Must appear that it was adverse to plaintiff.—Perkins v. Nugent, 45 M. 156. Statutes of limita-

tions are statutes of repose and must not be defeated by undue strictness of construction.—Towle v. Wright, 37 M. 93. Action for possession of lands to which title is claimed under tax deed or entry thereupon limited to ten years after the right to make such entry or to bring such action shall have accrued.—9714 C. L. '97. See Perry v. Hepburne, 4 M. 165; Chamberlain v. Ahrens, 55 M. 111; Harrison v. Spencer, 110 M. 215; Whittaker v. Shooting Club, 102 M. 454. Statute protects parties entering under tax titles whether good or bad after ten years occupancy.—Riley v. Blaser, 61 M. 39. See also Hardy v. Powell, 40 M. 413; Whitford v. Brooks, 54 M. 261. Proof that a deceased person occupied lands several years and died in possession is presumptive evidence of seizure in favor of his heirs or of purchasers from his estate.—Hall v. Kellogg, 16 M. 135. After the holder of a tax title has recorded it and held possession for many years, the holder of the original title cannot question the tax title in collateral proceedings, as in an action of ejectment.—Blanchard v. Powers, 42 M. 619. As to recovery for improvements see notes to Sec. 104.

ACTION TO SET ASIDE: Trial of one's rights must precede dispossession.—McCombs v. Merryhew, 40 M. 721. As to laches and unreasonable delay to apply for relief by setting aside sale in chancery, see Goodwin v. Burns, 21 M. 211; Haff v. Jenny, 54 M. 511. In a contest between one who is seeking to make a gain and one who is struggling to avoid a loss equity will favor the latter.—Miller v. Aldrich, 31 M. 408. An order setting aside a foreclosure sale and opening the case cannot be made without bringing in such third persons as have acquired rights under the sale.—Jewett v. Morris, 41 M. 689. Decree setting aside sale for jurisdictional defects should require petitioner to refund to the purchaser the amount by him paid with interest.—Jenkinson v. Auditor General, 104 M. 34. Where valid legislative act has determined the conditions on which rights shall vest or be forfeited and there has been no fraud in conducting the legal measures, no court can interpose conditions or qualifications in violation of the statute.—Cameron v. Adams, 31 M. 426.

Where in action to set aside on ground that tax was erroneously assessed as a part instead of the whole of a parcel of land, the collector's return introduced showed tax against a part of the land only, but it was consistent with the returns that the land might have been correctly assessed as a whole and a part cleared by payment before the return, the court in support of the deed would presume such payment.—Wright v. Dunham, 13 M. 414. Tax deed based upon assessment containing a fatally defective description of the property conveyed no title and owner was not estopped from denying the validity of the deed by having allowed sale to be made, and purchaser to make improvements without objection.—Petit v. F. & P. M. Ry. Co., 114 M. 362.

An imperfect title can be disputed by those only who have a better one.—Covert v. Morrison, 49 M. 133. One who attacks a judicial sale as invalid after strangers have acquired rights under it must do so by some original proceeding in which an issue can be framed and tried in the ordinary way, and the persons concerned brought in as parties.—Cook v. Hall, 6 Det. Leg. News 1070. Objections raised by petitioners in a proceeding to set aside a tax sale relative to the assessment and return of the taxes held to be foreclosed by the decree of sale and the provisions of Sec. 70.—Nester v. Church, 6 Det. Leg. News 284.

Tax sale held void on ground of fraud and conspiracy where county treasurer (who was the mortgagor) falsely represented to the mortgagee that taxes were paid and connived at sale of lands to third party for delinquent taxes.—Christian v. Soderberg, 118 M. 47.

While the holder of the tax title may rest upon his deed until the opposite party may introduce such evidence as in the absence of all counter-testimony will afford reasonable ground for presuming the proceeding anterior to the deed to be irregular, yet when this is shown the burden of proof is thrown upon the holder of the tax title. To overcome the presumption of regularity of the Auditor's deed plaintiff must show some substantial error affecting injuriously the former owner of the land.—Case v. Dean, 16 M. 12.

In O'Connor v. Circuit Judge, Mich. Mandamus Cases, 423, order to show cause why mandamus should not issue to vacate an order granting leave to file a bill of review in 1897, in matter of the petition for the sale of 1894, denied.

ADVERSE POSSESSION: If the tax purchaser obtains possession and holds it until protected by a limitation law, he then becomes safe, not because his tax title is any more regular, but because the holder of the better title has become incapable of asserting it. As an illegal tax title is a nullity it cannot of itself divest or affect the true title in any way, and the true owner cannot be lawfully compelled to incur expense or take active measures to get rid of it unless he sees fit; but if he becomes ousted, whether by a pretended tax title holder or by any adverse claimant, he can only secure the enjoyment of his rights by active measures, and the party in possession may then rely on such possession until it is lawfully assailed by suit or otherwise within the period of limitation.—Groesbeck v. Seeley, 13 M. 329.

Adverse possession under the statute must be open, notorious, continuous, exclusive, visible and distinct, as well as adverse. There must be an actual occupancy, as distinguished from constructive possession, of a portion or all of the premises claimed; not necessarily living thereon, for, if the premises are enclosed, and cultivated, this would be a sufficient actual occupancy; and if crops were continually grown thereon, this would be a visible occupancy; and though in the interim between harvesting and recropping no person was actually on the land, and nothing done thereon, yet, if such cropping continued from year to year this would be a con-

tinuous and notorious occupancy, within the definition above given.—Cook v. Clinton, 64 M. 309; Yelverton v. Steele, 40 M. 538; Paldi v. Paldi, 95 M. 410. When one enters upon land under color of title and with claim of ownership, any acts of user which are continuous, and indicate unequivocally to the neighborhood in which the land is situated that it is appropriated exclusively to his individual use and ownership, are sufficient to render the possession adverse. It is not necessary that the occupation of land should be such that a mere stranger passing by the land would know that some one was asserting title to, and dominion over it, nor that the land be cleared or fence or any building be placed thereon, to render such occupation adverse.—Murray v. Hudson, 65 M. 670.

Payment of taxes is not necessarily such an assertion of ownership as to affect the adverse possession of another.—Cook v. Rounds, 60 M. 310. Payment of taxes is not sufficient to establish title by adverse possession but is competent evidence to be considered in determining the question.—Whittaker v. Shooting Club, 102 M. 454. A tax deed which is insufficient in itself to pass title and assessment roll showing assessment to grantee are admissible to characterize the acts of possession on the part of the grantee and his successors.—Chabert v. Russell, 109 M. 571. As to adverse possession by grantee under a deed from the holder of void tax titles, see Judson v. Duffy, 96 M. 255.

REFUNDING: Auditor General cannot refund any money upon the failure of tax titles except as some statute requires it. Act providing for refunding does not authorize such repayment in a case where the tax title has merely been introduced in evidence in an ejectment suit and held defective; but the judgment must be one acting directly upon the title.—Rice v. Auditor General, 30 M. 12. Further as to refunding see notes to sections relative to payment; also index of subjects in notes.

When sale is set aside it is the duty of the Auditor General to refund all money paid on the sale and to charge back the taxes set aside and include all other taxes in subsequent petition for decree. The lien of the State is not extinguished by payment as a condition of purchase in such case, but is only suspended.—Auditor General v. Patterson, 6 Det. Leg. News 541.

See Secs. 75, 86, 104, 144.

OF REDEMPTION AND ANNULMENT.

Period of redemption.

SEC. 74. Am. Act 154 of 1895, and Act 225 of 1897. (3897). Am. Act 262 of 1899. Any person owning any of the lands sold as aforesaid, or any interest therein, may, at any time before the first Tuesday in May in the year following such sale, redeem any parcel of such lands, or any part or interest in such lands, by showing to the satisfaction of the county treasurer or Auditor General that he owns only that part or interest in the same which he proposes to redeem, by paying to the county treasurer or Auditor General the amount of the sale of the parcel of land, or the portion thereof wished to be redeemed, and interest thereon from the date of such sale. Upon the payment of the redemption money and interest thereon at one per cent per month or fraction thereof to the county treasurer as aforesaid, he shall issue a redemption certificate in duplicate in such form as may be prescribed by the Auditor General, both of which certificates shall be countersigned by the county clerk, who shall make an entry of the number of such certificate, the amount for which it was given and the name and address of the person paying the same, one of which certificates shall be delivered to person making such redemption payment, and the other shall be immediately transmitted to the Auditor General. The county treasurer shall also make a minute of such redemption certificate in the tax record book kept in his office, with the name of the payee, the date and the amount paid. Such certificate or the duplicate, and the entry thereof by the clerk or the county treasurer, shall be evidence of such redemption payment in the courts of this State. In case any such lands are redeemed at the office of the Auditor General,

Redemption certificates.

Notice of redemption.

Record.

Evidence of redemption.

a notice containing all the above facts shall be sent to the county treasurer of the proper county, who shall cause the proper entries to be made on the Tax Record of his county and in the office of the county clerk.

Notice and record of redemption at Auditor General's office.

County treasurers are provided by the Auditor General with blank applications which all applying to them to redeem should be required to fill and sign. The form includes the statutory showing of interest. The same blank is furnished by the Auditor General to all who make application to redeem at his department.

It does not appear to be incumbent upon the officer to whom a tender for redemption is made to determine the title or interest of the party who seeks to redeem (legal titles are to be tried by law.—Hoffman v. Beard, 22 M. 59); but presumably when showing of interest is made in proper form such showing will be accepted as satisfactory unless the officer has proof that the applicant has not such interest as he claims he has.

Right of redemption exists only when permitted by statute. Courts cannot read into the law extensions of time, exceptions, etc.—Dumphy v. Hilton, 6 Det. Leg. News 432.

One having no legal or equitable interest in the premises cannot redeem.—Harwood v. Underwood, 28 M. 427. A volunteer cannot redeem.—Smith v. Austin, 9 M. 465, 11 M. 34. Sale of standing timber is sale of an interest in the land.—Johnson v. Moore, 28 M. 3; Russell v. Myers, 32 M. 522; Wetmore v. Neuberger, 44 M. 362; Wait v. Baldwin, 60 M. 622; Williams v. Hyde, 98 M. 152; but a parol license to cut timber is not.—Greeley v. Stilson, 27 M. 152. Equity of redemption is an interest in land.—Rawdon v. Dodge, 40 M. 697. A right of way is an interest.—D. H. & I. R. R. Co. v. Forbes, 30 M. 175. So is an easement.—Millard v. Reeves, 1 M. 110. See also Fletcher v. Township of Alcona, 72 M. 18. Owner of undivided interest may redeem.—People v. Treasurer of Detroit, 8 M. 14. Further as to who may redeem see Cooley on Taxation 538-9, and cases cited at Sec. 8507 H. S. Redemption gives no new title. It simply relieves the land from the sale.—Cooley on Taxation 543. In Johnston v. Knapp, 35 M. 307, it was suggested that a redemption when made is sufficient in all cases and by whomsoever made to save the title to the real owner whoever he may be. As to right of redemption see also Cargill v. Power, 1 M. 369.

Interest on redemption is rather a penalty or an exaction for the privilege of redeeming.—F. & P. M. R. R. Co. v. County Treasurer of Saginaw, 32 M. 260. Right to redeem strictly limited to the statutory period.—Gantz v. Toles, 40 M. 725. Courts of equity cannot extend or enlarge time for redemption.—Cameron v. Adams, 31 M. 426. Statutory time for redemption is not affected by the mistaken date of expiry in certificate of sale.—Muirhead v. Sands, 111 M. 487.

A party who through negligence or gross ignorance of the law fails to redeem within the time limited by statute has no claim to relief in equity.—Campau v. Godfrey, 18 M. 27. Owner and purchaser agreed upon amount for assignment of certificate, and former relying thereon, permitted time for redemption to expire, after which purchaser obtained deed and refused thereafter to accept tender of agreed amount; Held, to be fraud upon the owner and that he was entitled to decree against purchaser for conveyance.—Laing v. McKee, 13 M. 124.

In Fitzgerald v. Auditor General, Mich. Mandamus Cases 1034, mandamus to compel respondent to execute to relator deed of lands sold at tax sale, respondent having previously issued certificate of redemption, was denied. In Detroit F. & M. Ins. Co. v. Wood, 118 M. 31, owner remitted to county treasurer to redeem from sale for taxes of 1891 and 1892 and county treasurer issued certificates of redemption for both years, time for redemption from sale for tax of 1891 having expired. Auditor General accepted the duplicate for 1892 and declined to accept that for 1891. Held when owner remits sum to be devoted to discharge of specified taxes it should all be applied as intended or no part of it accepted.

Money paid by the holder of a mortgage to redeem from tax sale does not constitute a lien apart from the mortgage but is discharged when the mortgage is satisfied.—Vincent v. Moore, 51 M. 618.

Copy of decree of annulment.

SEC. 75. (3898) Whenever any court of competent jurisdiction shall by decree annul any certificate executed by the county treasurer aforesaid or any deed issued by the Auditor General, the clerk of such court shall, on the payment, by any party interested, of fifty cents, deliver to such person a certified copy of such judgment, decree, or order, which certified copy of such judgment, decree or order shall be a proper subject of record in the office of the register of deeds of the county in which the land is situated, and on recording the same, the register shall enter in the margin of the record of the tax deed af-

Subject of record.

Notice to Auditor General.

fected by such decree or record, a brief statement of such judgment, decree or order, and shall also send notice of such decree or order to the office of the Auditor General.

Tax held illegal, when.

SEC. 76. (3899) In any suit or proceeding to enforce or set aside any tax, such tax shall be held illegal only for one of the following reasons:

Unauthorized tax. No jurisdiction.

First, That no law authorizes such tax;

Second, That the person or persons appointed to decide whether a tax shall be raised under a given law, have acted without jurisdiction, or have not imposed the tax in question;

Exempt, etc.

Third, That the person or property assessed was exempt from the taxation in question or was not legally assessed;

Tax paid.

Fourth, That the tax has been paid;

Fraudulent assessment.

Fifth, That the supervisor or board of review in assessing a person or property for taxation, or in the apportionment of the tax to the person or property in question acted fraudulently.

Other taxes sustained.

If any such illegality, omission or fraud affects the amount of one tax only, the tax shall be sustained so far as the same is legal and just.

As to period within which a sale under a decree in chancery will be set aside.—Leonard v. Taylor, 12 M. 398.

SUB. 4.—A sale made after the tax has been paid is unauthorized and the deed on such sale conveys no estate or title whatever. One claiming to have paid the tax before sale is not precluded by the deed but may go behind it and show that fact.—Rowland v. Doty, Harrington's Chancery Reports 3.

SUB. 5.—To justify court in setting aside assessment on ground of fraud and conspiracy the evidence must clearly establish the charge.—Pioneer Iron Co. v. Negaunee, 116 M. 430.

That valuation by assessing officers was too low or that property subject to assessment was not assessed is not of itself sufficient to allow taxpayer to escape taxation. It must appear that because of these things he is made to pay more than his portion of the taxes.—A court would not be warranted in holding an assessment invalid because the assessor or board of review had acted fraudulently, unless that fact was clearly established by the evidence.—Muskegon v. Boyce, 6 Det. Leg. News 1096.

See Sec. 144.

Competent evidence.

SEC. 77. (3900) In the prosecution or defense of any action or proceeding by any person holding or claiming land under any deed or deeds of lands purchased for delinquent taxes, the party so claiming, under and by virtue of such purchase, may show his title to such land and premises, whether the same was derived under one or more purchases, and may give in evidence any and all deeds of conveyance or other evidence of such purchases as aforesaid, which he may at any time have received, and may claim title under any or all of them.

Where title rests upon the validity of tax deeds covering taxes for several years briefs should be comprehensive, covering statutes, decisions, etc., applicable to each point raised.—Hoffman v. Pack-Woods Co., 114 M. 1.

It would involve an absurdity to say that a subsequent title acquired at a tax sale and which breaks up and destroys all prior titles operates at the same time to strengthen such prior titles.—Lacey v. Davis, 4 M. 153. But purchaser may bid upon the same lands at a tax sale before the time of redemption under his former purchase has expired and have the benefit of such bid.—Tweed v. Metcalf, 4 M. 579.

A claim of title under a tax deed is of necessity hostile to the title of the claimant under the original title.—Sparrow v. Hovey, 44 M. 63.

A bill to remove a cloud from the title to lands where complainant's title is through a judicial sale cannot be sustained where the proceedings which were the basis of such sale and upon which the validity of complainant's title depends are shown to be void for jurisdictional defects.—Griswold v. Fuller, 33 M. 268. Purchase at a void tax sale can in no way effect the deed made pursuant to a sale previously made.—Jenison v. Conklin, 114 M. 9.

In an action of trespass for entering land, etc., tax deeds which the evi-

dence shows are void may be treated as color of title; and if the defendant took possession under them they are admissible in evidence as tending to show what and how much lands he claims.—Hoffman v. Harrington, 28 M. 90. As to good faith of acts done under title based upon tax deeds, see Grant v. Smith, 26 M. 201; Winchester v. Craig, 33 M. 222.

OF TAX LANDS HELD BY THE STATE.

Sale of State tax lands.

SEC. 78. Am. Act 225 of 1897. (3901) Am. Act 262 of 1899. All lands heretofore or that may be hereafter bid off to the State for taxes, which have not been redeemed or otherwise disposed of, shall be offered for sale by the county treasurer at the regular annual tax sale provided to be held under the provisions of this act. The Auditor General shall furnish to each county treasurer in the month of April prior to the month of May in the year in which such tax sales are held, as provided in this act, a statement of all lands in his county that may have been bid in for the State, then remaining unredeemed or not otherwise discharged. Such statement shall exhibit the aggregate amount of all sums due on each description of land, including interest thereon at the rate of twelve per cent per annum from the first day of the month in which the land was bid in to the State until the first day of the month in which said annual tax sale is to be held, as heretofore provided for by this act.

Auditor General to make statement.

State tax land books are public records and subject to inspection by any citizen.—Aitcheson v. Huebner, 90 M. 643. Time to furnish lists is directory.—Garner v. Wallace, 118 M. 387.

Purchaser of state tax lands at annual tax sale is not required to pay all taxes then a lien as previded in Section 84 in order to entitle him to deed.—Berkey v. Burchard, 6 Det. Leg. News 288.

Notice of sale.

SEC. 79. Am. Act 225 of 1897. (3902) The Auditor General shall cause to be published for four weeks successively, which shall be construed to mean four publications once a week, next previous to the first Tuesday in May in the years provided in this act, a notice that the lands described in such statement will be offered for sale at public auction at the time and place designated for the regular tax sales. At the time and place designated in the notice, the county treasurer shall proceed to sell said lands last mentioned and continue the same from day to day, except Sundays, until the whole have been offered, and any person bidding on any of said lands, shall be subject to the requirements, provisions and penalties of section seventy of this act.

Requirements same as in sale from Tax Record.

Publication of list of descriptions of State tax lands is not required.—Garner v. Wallace, 118 M. 387. Auction sale implies sale to the highest bidder and where notice was given of sale by auction it will be presumed that it was so made.—McCammon v. Railroad Co., 103 M. 104.

Purchaser must take entire State lien.

SEC. 80. (3903) In all cases where a description of land is offered as State or county tax land, and the same description or any part thereof shall be offered in the list of lands delinquent for taxes, as provided in this act, the county treasurer shall inform the person bidding for the same of that fact, and such person shall be required to purchase said description at the same time, and if he refuses so to do, the treasurer shall

refuse his bid, and shall again offer it as if no bid had been made thereon.

For rules governing sale, see Sec. 70. See also Sec. 72.

Certificate of sale.

SEC. 81. (3904) The county treasurer shall, on payment of the purchase money of such sale, issue a certificate of sale to the purchaser, in such form as is prescribed by section seventy-one of this act, so far as the same may be applicable, number the same, and shall enter the name of the person to whom the same was issued, with the number, date and amount thereof, in a book kept in his office for that purpose.

Record thereof.

Purchaser has no right of entry on certificate before deed.—Busch v. Nester, 62 M. 381. But purchaser of unoccupied land is constructively in possession and may maintain trespass against one who without his authority having no color of title to the lands enters upon them, cuts and carries away standing timber.—Safford v. Bastow, 4 M. 406.

Certificates of sale must bear same number as that on State tax land list orposite the description.

See Sec. 115.

Auditor General to issue deeds.

SEC. 82. (3905) After the period of redemption provided for in this act shall have expired, the Auditor General, on presentation and surrender of such certificate, shall issue to the purchaser, his heirs or assigns, a deed of conveyance, except when the same has been redeemed or has been bid off to the State for another tax, and in case of redemption the amount of the redemption shall be paid to such person: *Provided*,

Proviso.

That such deed shall have the same force and effect as is given by section seventy-two of this act.

Sufficient that it be shown that deed was made in pursuance of law.—Garner v. Wallace, 118 M. 387.

A vendor acting in good faith is not responsible for the goodness of his title beyond the extent of his covenants.—Thorkildsen v. Carpenter, 6 Det. Leg. News 196.

See Secs. 73, 140-2.

Affidavit of loss of certificate.

SEC. 83. (3906) In case of the loss of such certificate of sale, the purchaser, or his legal representative or assigns, may file his affidavit, duly verified, of such loss, and that he was, at the time of such loss, the *bona fide* and legal holder and owner thereof. The Auditor General shall thereupon execute, as aforesaid, a deed for the land described in said certificate, if the same shall not have been redeemed, in the same manner as though it had been presented and surrendered. The Auditor General shall execute a second deed of lands conveyed as herein provided, in all cases in which he shall be satisfied, by sufficient proof, that the original deed and record thereof has been lost or destroyed, which said deed shall declare upon its face that it is a second deed, and shall recite the loss or destruction of the former deed and its date, if possible. Such deed shall inure to the benefit of the grantee in the first deed, his heirs or assigns, as the case may be, and shall have the same force and effect as said first deed. Before the execution of such deed, the party applying therefor shall pay to the Auditor General the sum of one dollar, which shall belong to the general fund of the State.

Deed on affidavit of loss.

Second deed to replace lost deed.

Fee.

When court may order new deed.—9032 C. L. '97. Second deed which does not recite upon its face the loss or destruction of former deed and its date, if possible, is no evidence of title.—Burroughs v. Goff, 64 M. 464. Applicant for second deed must make affidavit of loss of first deed and also furnish certificate of register of deeds that the deed has not been recorded.

Purchase of State tax land or State bids of Auditor General.

SEC. 84. Am. Act 154 of 1895. (3907) Am. Act 262 of 1899. Any person may purchase any State tax lands or any State bids, at any time except during the annual tax sale at the county treasurer's office, by paying therefor to the Auditor General the amount for which the same was bid off to the State, with interest on the same at the rate of one per cent per month or fraction thereof from the first day of the month in which such lands were bid off to the State, together with the other taxes which have been returned to the Auditor General and remain a lien on such lands at the time of the purchase so made, with the interest thereon at the rate provided in this act: *Provided*, That purchase may be made of any State bid within the period for redemption without payment of the taxes of subsequent years as a condition of purchase, in case the land is not held by the State as State tax land; but for all taxes remaining unpaid the land shall be liable to sale as provided by section eighty-five of this act. Upon making payment as above such purchaser shall be entitled to and receive a certificate, and a deed conveying all the right, title and interest of the State to such tax lands acquired or accrued by virtue of the original sale or sales to the State. All the provisions of law relative to deeds executed by the Auditor General on the surrender of certificates of sale made by the several county treasurers shall be applicable in making deeds for such purchases.

Conditions.

Proviso.

Certificate and deed.

Purchase under this section can be made of no officer other than the Auditor General, and if moneys are paid to the county treasurer that officer is for the purpose thus made the agent of the intended purchaser.—In Neeley v. Rood, 54 M. 134, it was held that moneys paid to county treasurer to be forwarded to the Auditor General were not received by the county treasurer in his official capacity, and that it is no part of his official duty to receive money to be paid to the Auditor General.

Purchase is complete when application is made to Auditor General and sufficient money paid. Issue of deed is a ministerial act, necessary to evidence the title which was in purchaser as soon as the statutory requirement as to application and payment were complied with.—Eldridge v. Richmond, 6 Det. Leg. News 259. It will be presumed, in the absence of evidence to the contrary, that payment was made at the date the application was received and not on the date the deed was issued.—Wilkin v. Keith, 6 Det. Leg. News 305.

Where applicant has not paid with his application all the statute requires and owner causes the current taxes to be paid and tender to the Auditor General made to pay the state bids before the purchaser makes a new and perfect application, the owner is entitled to the deed.—Wilkin v. Keith, 6 Det. Leg. News 305. Where application was made with insufficient remittance and balance was not received until another tax (not included in the remittance) was payable as a condition of the purchase, deed issued was held void.—Purchaser not entitled to deeds to the amount of his remittance with an insufficient payment for all descriptions in his application in the order in which they appear.—Hubbard v. Auditor General, 6 Det. Leg. News 258. Grantee in tax deed which is void by reason of failure to pay all the statute requires may have refunding and on proper application may repurchase if no intervening rights have accrued.—Cockburn v. Auditor General, 6 Det. Leg. News 316.

It is the duty of the purchaser to ascertain the amount of all unpaid taxes (subject to payment as a condition of purchase) at the time of his application, and it is not sufficient compliance for him to forward to Auditor General with his application a gross amount sufficient to cover taxes that may be unpaid and leave it to that official to determine that all taxes due as a condition of purchase are included.—Hall v. Mann, 6 Det. Leg. News 633. In this case the purchaser claimed that his deed should be held valid on payment of a tax which was omitted, payment for which was not retained by the Auditor General, but which his remittance was sufficient in amount to cover.

Whenever any person owning one or more government sub-divisions of lands included in the assessment with other government sub-divisions shall make or cause to be made affidavit setting forth that said person owns said sub-division, etc., and that affiant is desirous of paying all the taxes assessed against said land, upon tender by such person to the Auditor General of the proportionate amount of the taxes, interest and charges against said description, it shall be the duty of the Auditor General to issue to such person a deed of the description described in such affidavit.—3984 C. L. '97. All purchases under the foregoing provision must be made upon application to the Auditor General.

When lands subject to sale are applied for and payment tendered, Auditor General has no discretionary power to retain them from market for the accommodation of parties who had made application previously but were not ready to pay the money.—See People v. Pritchard, 17 M. 338, 341. Person applying to purchase and paying insufficient amount has no right to rely upon the verbal assurance of a clerk with whom he transacted the business that his payment would secure him the lands if on notice he should pay the balance. When two persons are contending for priority as applicants for the purchase of public lands, one has no right to object that the payment made by the other was in a draft, it having been received as money and it not appearing that it was of less value than currency.—See People v. Com. State Land Office, 19 M. 470. Where purchaser has accepted tender of purchase money and afterward re-offers it, mandamus will not lie to compel the issuance of tax deeds if in the interim the land has been conveyed to other parties.—Aitcheson v. Huebner 90 M. 643. See also Ball v. Auditor General, unreported mandamus case.

Court may at any time before enrollment of decree by default entertain the petition of owner of any land in Auditor General's petition to alter or vacate said decree, notwithstanding the purchase from the State by third party.—Benedict v. Auditor General, 104 M. 269. A party attacking a judicial sale as invalid after the rights of a third party have accrued, must do so by some original proceeding in which an issue can be formed and tried in a general way.—Crawford v. Tuller, 35 M. 57. Period of limitation against an action depends upon the act in force at the time cause of action accrued.—McKenzie v. A. P. Cook Co., 113 M. 452.

An assignee in bankruptcy who claims as a part of the bankrupt estate lands conveyed by the bankrupt prior to the commencement of the bankruptcy proceedings does not occupy a fiduciary relation to such grantee which makes it inequitable for him to claim the land as belonging to the estate or to purchase tax titles thereon granted on sales for delinquent taxes assessed after such assignment, such claims not relieving the grantee from the duty of paying said taxes.—Newaygo Mfg. Co. v. Stevens, 79 M. 398. A tax deed based upon distinct taxes of different years is valid if any one of the sales was valid whether the others were or not.—Hunt v. Chapin, 42 M. 24.

In Smith v. Auditor General, Mich. Mandamus Cases 1030, relator had applied to purchase by mail, enclosing an insufficient amount. Being advised of the shortage, he remitted the balance, but in the meantime another applicant had paid the full amount, and received deed. Relator petitioned for mandamus to compel respondent to issue deed to him. Order to show cause denied. In Widner v. Rayburn, Co. Treasurer, Mich. Mandamus Cases 1036, the facts were similar to the foregoing except that relator had made no tender nor payment before other parties had tendered payment. Order to show cause was issued but petition was withdrawn at the hearing.

In Osgood v. Circuit Judge, Mich. Mandamus Cases 370, relators had made application and payment for certain lands, and in proceedings instituted by mortgagee to set aside decree of sale relators filed petition to intervene and gave notice that their petition would be brought on for hearing on the day fixed in an order made requiring the Auditor General to show cause why the petition of the mortgagee should not be granted; but counsel for relators failed to appear in court on that day until after the court had made an order denying relators' leave to intervene. Mandamus to compel respondent to set aside this order denied.

The owner of lands which have been sold by the state for taxes cannot be heard to complain that the Auditor General accepted the personal check of the purchaser in payment of the lands.—Hubbard v. Auditor General, 6 Det. Leg. News 258.

Provisions of this section not applicable to purchases at annual tax sale.—Berkey v. Burchard, 6 Det. Leg. News 288.

The business of dealing in tax titles is lawful and is recognized and encouraged by tax laws.—Aitcheson v. Huebner, 90 M. 643. Officers and clerks in Auditor General's Department and State Land Office prohibited from purchasing.—1321-2 C. L. '97. Further as to who may not acquire title by purchase, see Sec. 72.

See Secs. 72, 115, 139, 140-2.

Sale no bar to subsequent taxes.

SEC. 85. (3908) Neither the sale of State tax lands, nor the sale of any of the bids of the State for which the time of redemption has not expired, shall in anywise prejudice the right to enforce the collection of any tax subsequent to the year or years for which the same has been sold as aforesaid, and for the taxes and charges remaining unpaid for said subsequent

year or years, the Auditor General shall cause such lands to be offered in regular succession at the next ensuing annual sales for taxes, giving notice as required by law, unless previously redeemed or otherwise discharged.

See Sec. 139.

Adverse claim. Ejectment.

SEC. 86. (3909) In all cases where it shall become necessary, in the prosecution of an action of ejectment by any person holding an adverse claim to any lands hereafter bid in for the State as provided in this act, the Auditor General may be defendant, and in all cases in the prosecution or defense of an action of ejectment or trespass by any person holding or claiming land under any deed or deeds or other conveyance of land bid off or purchased for delinquent or unpaid taxes, the party reclaiming under and by virtue of such purchase for unpaid taxes may show his title to said land and premises, whether the same was derived under one or more purchases or sales for taxes or otherwise, and may give in evidence any and all deeds of conveyance or other legal evidence of such purchase as aforesaid, which he may have received on sales for taxes, and may claim title under any or all of them: *Provided*, In no case shall the State or county be required to refund any taxes or money by reason of defect in said taxes or sales, prior to the particular tax or deed which may be decreed valid.

Evidence.

Proviso.

Action of ejectment.—10647-11012 C. L. '97. The statute places no limitation on actions of ejectment.—Harrison v. Spencer, 90 M. 586. One who paid for and procured a tax deed and caused it to be recorded is properly subject to an action of ejectment.—Tillotson v. Webber, 96 M. 144.

Quieting title.—448 C. L. '97; 11182-4 C. L. '97. The State is bound by statutes of limitation and can give no title by selling after twenty years an old tax bid for premises that have meanwhile been held adversely long enough to bar ejectment from them.—Chamberlain v. Ahrens, 55 M. 111. See also State v. F. & P. M. R. R. Co., 89 M. 481. Purchasers take not more than the deed gives them. Plaintiff in ejectment having established title to undivided one-third, judgment in his favor for entire premises cannot be sustained.—Reilly v. Blaser, 61 M. 399.

A single judgment in ejectment is not necessarily final for any purpose.—Rice v. Auditor General, 30 M. 12. Ejectment for distinct parcels of land must be brought against each separate holding.—Walsh v. Varney, 38 M. 73. The holder of a tax title whose occupancy consists in making improvements and not in actual residence, can bring ejectment against one who has forcibly entered without right and by stealth.—Van Auken v. Monroe, 38 M. 725. In ejectment to obtain possession of land held under land contract the vendee is estopped from showing title which had accrued through his fault or neglect.—Hubbard v. Shepard, 117 M. 25.

A tax deed giving a prima facie title constitutes a perfect defense in an act of ejectment.—Conn. M. L. Ins. Co. v. Bulte, 45 M. 113. Title by deed is a question of fact.—Demill v. Moffat, 45 M. 410. Summary proceedings to recover possession of lands will not lie against holder of a tax title antedating a mortgage under foreclosure of which complainant claims. The holder of a tax title may fortify it by purchasing earlier tax titles and incumbrances.—Brown v. Martin, 49 M. 565. Commulative titles.—See Lacey v. Davis, 4 M. 140.

In action of ejectment it is not error to admit in evidence a tax deed without first proving the regularity of the proceedings for the assessment of the taxes.—Dubois v. Campau, 24 M. 360. Where proceedings to foreclose a tax lien are regular, the decree is conclusive upon owner who is brought in by publication, and neither he or his grantee can question the validity of the tax in an action of ejectment brought against the grantee in the deed issued upon a sale made under said decree.—Cole v. Shelp, 98 M. 56.

Tax deed cannot be attacked collaterally on the ground that no certified copy of decree was attached to the Tax Record. Failure to so attach is not an irregularity which perjudices property rights.—A contention that the extension of the taxes opposite the lands of defendant was made after decree was signed cannot be raised in ejectment.—Gates v. Johnson, 6 Det. Leg. News 615. Tax deed cannot be attacked in a colateral proceeding on the ground that decree was void because when included in Auditor General's petition the land had been bid to the state and was thus held.—Peninsular Savings Bank v. Ward, 6 Det. Leg. News 311; Hoffman v. Pack

Woods & Co., 6 Det. Leg. News 954. Tax deed fair on its face cannot be attacked by parol in collateral proceedings.—Haven v. Owen, 6 Det. Leg. News 293.

The validity of a tax record will be presumed in a collateral proceeding, and it is not competent for the land owner in such proceeding to attempt to impeach it by the parol testimony of its lawful custodian.—Wilkin v. Keith, 6 Det. Leg. News 305.

Defendant in ejectment who fails to connect himself with the original title, etc., cannot question the title of the plaintiff under tax deeds.—Jennings v. Dockham, 99 M. 253.

Every sale of land under our tax system is a sale of the complete title and, if legal, all prior titles are cut off by it.—Sinclair v. Learned, 51 M. 335; Westbrook v. Miller, 64 M. 129. A tax title if valid destroys and cuts off all liens and incumbrances previously existing against the land, even homestead and dower rights.—A finding in an ejectment suit brought by one claiming under tax title that the lands were sold to the State for subsequent delinquent taxes and that a third person became the purchaser of the rights of the State therein, is a finding of an outstanding title in such third person prima facie valid and free from all prior liens.—Robbins v. Barron, 32 M. 36.

Former owner cannot defeat a tax title by showing in action of ejectment that he attempted to make payment. His remedy is Sec. 70 or Sec. 98.—Kneeland v. Wood, 117 M. 174.

OF ACCOUNTS AND SETTLEMENT THEREOF.

Tax accounts.

SEC. 87. Am. Act 154 of 1895 and Act 224 of 1897. (3910) Am. Act 83 of 1899. The accounts between the State, county and each township shall be adjusted on the basis of crediting and paying to each the taxes collected by and for each with the interest thereon. The Auditor General shall, on the first day of January, April, July and October in each year, make a statement of account between the State and each county respectively, and render the same to the county treasurer of each county, and draw his warrant on the State Treasurer, payable to such county treasurer, for all moneys in the State Treasury collected for the county, township, school, highway or any other purposes for such county or township or district thereof, and transmit such warrant to the county treasurer, and notice to the county clerk thereof. At the same time the county treasurer shall pay to the State all moneys collected and due from their respective counties to the State, as shown by such account so rendered by the Auditor General to be due the State: *Provided*, That on January fifteenth, and each thirty days thereafter until the regular quarterly settlement for the quarter ending March thirty-first shall have been made each year, the county treasurer shall pay to the State all moneys coming into his hands from the collection of said State tax. The county treasurer of each county shall, on or before the first day of February, May, August and November in each year, make out a detailed statement of the account between the county and the several townships or cities, which statement shall show the different funds to which the several debits and credits belong, and render the same to the township or city treasurer, and pay all moneys shown by said statement so rendered to the township or city to the proper receiving officer of the township or city, and notify the township or city clerk of the items and total amount thereof; also a description of the lands upon which such taxes were paid. The county clerk shall charge such amounts to the county treasurer, and the township or city clerks shall charge such amount to the town-

Auditor General's quarterly statement.

Payments to county, etc.

Payment to State.

Proviso.

Accounts between county and townships.

Duties of county and township clerks.

ship or city treasurers on the books of their respective offices: *Provided*, That in the county of Kent the county treasurer shall not be required to make a detailed statement. Proviso.

When Auditor General pays county money to county treasurer the county must be regarded against all others than the treasurer as having received it.—Roscommon v. Midland Supervisors, 49 M. 454. Mandamus does not lie to compel the Auditor General to pay over to a county money which has been withheld from it in the periodical settlements under a mutual mistake of law. Where money has gone in to the State treasury as part of a general balance rightfully received, and not as a separate and independent item wrongfully received, mandamus will not lie to require its re-payment, nor can any suit be maintained for it unless voluntarily allowed within the authority of some proper officer. When a State sues it is limited in its recovery by any defenses that might be set up by individual plaintiffs. A state cannot be sued in its own courts without its own consent; nor can any suit that is really against the State be maintained against a State officer. Executive discretion cannot be judicially reviewed; and where the action of any officer to whom the State confides the auditing of claims against it is anything but ministerial it cannot be reviewed.—Ambler v. Auditor General, 38 M. 746.

In controversy between the State and a county growing out of tax proceedings the State, while represented by the Auditor General, is the real party in interest, and in the legal positions taken speaks through the Attorney General and the county speaks by the board of supervisors. There should be no effort to obtain an unjust advantage by one over the other, and courts will not allow such a thing to be done, but will apply the rule of justice and equity in its broadest sense to the matters of difference between such parties. The proceeding by mandamus to which the parties are compelled to resort in such cases can only be taken in the court of last resort, to which the largest discretion is given; and the court may in its discretion refuse the writ unless the applicant consents to do equity.—Auditor General v. Saginaw Co. Supervisors, 62 M. 579. See Haines v. Supervisors of Co. of Saginaw, 87 M. 237; 99 M. 32. Counties not estopped by settlements from asking that illegal charges be stricken from account sought to be enforced by mandamus.—Auditor General v. Midland Supervisors, 84 M. 121. In mandamus proceeding to compel county to collect and pay indebtedness to State, county cannot set off moneys previously paid to the State in excess of amount legally demandable. Where the petition in such case states the account between the State and the county from a specified date, the county may contest the validity of any of the items embraced within the account, although a balance shown to be due to the State at a subsequent date was paid by the county.—County cannot refuse to pay over State tax on the ground that apportionment to it included territory detached and organized into another county, but must look to the new county for reimbursement. Pay of State troops in aid of civil authorities, 1623 C. L. '97, a proper charge to the county.—Auditor General v. Bay Co. Supervisors, 106 M. 662.

County treasurer cannot refuse payment to State treasurer of State taxes collected on ground that county claims to have money due it from the State, and he will not be protected by action of board of supervisors directing non-payment. County treasurer in collecting State tax acts for the State, and board of supervisors has no control over the money thus collected, and he cannot commingle the account of the State tax collected with the account between the county and the State.—Auditor General v. Tuscola Co. Treasurer, 73 M. 28. In petition for mandamus to compel levy of tax to pay amount due State, respondent claims amount alleged to be due county as an offset. Held in nature of assumpsit and an irregular form of action against the State which cannot be maintained.—Auditor General v. Grand Traverse Supervisors, 73 M. 182.

Held proper to charge counties interest upon taxes charged back to the county; upon items erroneously credited to county and afterwards charged back; upon moneys paid for the use of the county for the benefit of deaf, dumb or blind, and upon periodical balances due from the county.—Auditor General v. Shiawassee Supervisors, 74 M. 536. Auditor General cannot open account with township but only with county.—Mandamus will not lie to compel payment by Auditor General of redemption of township taxes when during the period covered the county has been indebted to the State.—Ottawa Supervisors v. Auditor General, 69 M. 1.

County treasurer has no right to retain out of money admittedly due a city a sum equal to the delinquent personal taxes due the county for which he has issued his warrant to the city treasurer to collect.—City of Muskegon v. Soderberg, 111 M. 539. Mandamus will not lie to compel payment by county to township of moneys claimed to be due for taxes received from Auditor General and others when the account between the county and township has not been stated and no settlement has been made showing the state of account; but in such case assumpsit could be maintained by township to ascertain the amount due.—Township of Cumming v. Ogemaw Co., 93 M. 314; see also 100 M. 567. Failure of board of supervisors to have a deficiency occasioned by default of township treasurer added to the next year's tax does not affect the right of the county to charge the deficit to the township.—Oceana Co. v. Hart Township, 48 M. 319.

County liable for interest on balances.—Auditor General v. Ottawa Supervisors, 76 M. 295. Township, school district and road district taxes should

be accounted for by the county to which the returns were made, and with the respective townships and districts for which they were levied.—Clare Co. v. Auditor General, 41 M. 182.
See Sec. 42.

Report of tax payments and sales.

SEC. 88. (3911) The Auditor General shall, on the first Monday in each month, transmit to the treasurer of each county a list of the lands therein upon which the taxes have been paid to the State Treasurer, and also a list of all lands bid in to the State which have been sold during the preceding month, and upon receiving such lists the county treasurer shall make the proper entries showing such payment or sale. Where a sale has been made by the Auditor General the county treasurer shall note the fact upon the tax record.

County treasurer to note sales on Tax Record.

See Sec. 84.

Interest and collection fee.

SEC. 89. (3912) Am. Act 262 of 1899. To all taxes unpaid on the first day of March next after their assessment there shall be added interest at the rate of one per cent per month or fraction thereof, and to all taxes returned to the county treasurer there shall also be added a collection fee of four per cent. Such interest and collection fee shall be collected with such taxes, and the interest and taxes to be paid to the State, county and township, in proportion to their several rights therein. The collection fee paid to the county treasurer shall belong to the general fund of the county, and that paid to the Auditor General shall belong to the general fund of the State. No other charges shall be added to any taxes voluntarily paid either to the township treasurer, the county treasurer or the State Treasurer, except the expense after it accrues under section fifty-nine of this act.

Part of public funds.

Accrued expense.

Collection fee paid to county treasurer on sales or redemptions belongs to county.—Auditor General v. Bay Supervisors, 106 M. 662.

Compensation of officers.

SEC. 90. (3913) All compensation of officers in the assessment and collection of taxes in townships and in the return of delinquent taxes to the county treasurer, except fees collected by township treasurers on their tax rolls, shall be paid by the township. All compensation of county officers and expense incurred by them under the provisions of this act shall be paid by the county, and the compensation of all State officers and expenses by them incurred or paid, shall be paid by the State. Expenses made by the State officers shall be audited by the Auditor General and paid out of the general fund.

As to compensation of county officer whose annual salary has been fixed by board of supervisors see People v. Board of Auditors, 13 M. 233; Stetson v. Supervisors of Calhoun Co., 36 M. 10. Board of supervisors may include in compensation of county treasurer amount received for office charges on payment.—Munger v. Clerk of Board of Supervisors, 38 M. 307. Collection fee may be made part of compensation of county treasurer by board of supervisors.—People v. Reigel, 6 Dot. Leg. News 61.

The tax law prescribed the major part of county treasurer's duties and every change in or amendment to that law does not create an implied obligation to pay extra compensation for the new duties thereby imposed.—Backus v. County Treasurer, 99 M. 218. Compensation of county treasurer, 2542 C. L. '97; of prosecuting attorney.—2562 C. L. '97, see also 2649 C. L. '97; of county clerk.—2576 C. L. '97.
See Sec. 110.

SEC. 91. (3914) All losses that may be sustained by the default of any township officer in the discharge of any duty imposed by this act, shall be chargeable to such township. All losses by default of any county officer shall be chargeable to such county, and all losses by default of any State officer shall be chargeable to the State. Losses by default in discharge of duty.

Assessors will remember that any failure to perform the duties imposed upon them by the tax law will not be borne by the State but eventually, if not immediately, the loss falls upon their own township.
One item occasioning much loss is the return of land erroneously described, and in large part this expense would be avoided by the rejection of such descriptions by county treasurers when they receive and compare the township treasurer's return, as provided in Sec. 55.

MISCELLANEOUS PROVISIONS.

SEC. 92. (3915) The Commissioner of the State Land Office shall, during the month of March in each year, furnish to the several county treasurers a list of all part paid State lands, and also of all licensed homestead lands that have been licensed for a term of five years and over, and upon which patents have not been issued, together with the date of each license and the name of the licensee, in their counties respectively, and such treasurers shall, on or before the tenth day of April next thereafter, cause to be delivered to the supervisor of each township affected thereby an accurate description of all such lands in his township, with the names of the persons holding the same. Part paid State lands. Licensed homestead lands. Lists to be furnished to supervisors.

Commissioner to furnish county treasurers each year in time for assessment lists of swamp lands patented as provided in 1512 C. L. '97; and such lands shall be subject to assessment and taxation as other assessable and taxable lands.—1513 C. L. '97. County treasurer to furnish lists to supervisors. See also 1386 C. L. '97.

SEC. 93. (3916) Every county treasurer shall, before entering upon the duties of his office, execute to the Auditor General a bond, in such sum as the said Auditor General shall direct, with three or more sureties, to be approved by the prosecuting attorney, judge of probate, and the county clerk of the proper county, or any two of them and the Auditor General, conditioned that such treasurer, his deputy, and all persons employed in his office, shall render a just and true account of all moneys received by him or them belonging to the State, and that he or they shall faithfully and promptly pay to the State Treasurer all such moneys received as aforesaid according to law, which bond shall be filed in the office of the Auditor General. Whenever the Auditor General shall deem proper, he may require of the county treasurer a new bond with surety or sureties to be approved as aforesaid, and for such sum as he may deem necessary, and if the county treasurer from whom a new bond shall be so required shall not execute such a bond within ten days after he shall have received notice of such requirement, such failure may be deemed sufficient cause for the removal from office of such treasurer. County treasurer's bond. Who to approve. Conditions. Auditor General may require new bond. Cause for removal of county treasurer.

Deputy county treasurer—2536 C. L. '97. Fraud or embezzlement in office of county treasurer.—11563-5, 11612-14 C. L. '97. Sureties to justify.—159-61 C. L.

'97. Sureties disqualified from approving bond.—Stevenson v. Bay City, 36 M. 44.

Delivery of bond to Auditor General is in law a part of its execution.—Endorsement of Deputy Auditor General has same force and validity as if signed by Auditor General himself and shows approval and acceptance by Auditor General. An obligation having been incurred under bond that had not been properly approved, but otherwise in compliance with requirements of the statute, neither the county treasurer nor his sureties can be heard to insist upon such approval for the purpose of defeating their liability.—People v. Johr, 22 M. 461. See Sec. 94.

County treasurer's bond is cumulative security to the State for the proper performance of such duties to the State as are imposed upon him by the general tax law.—Attorney General v. Supervisors of St. Clair Co., 30 M. 388. County treasurers are responsible as debtors and not as bailees merely for the county funds to come into their hands and their liability is absolute and not affected by unavoidable loss or accident.—Perley v. Co. of Muskegon, 32 M. 132.

Where a bond is given to a public officer under statutory requirements, the official obligee is invested with a legal interest, and is the proper plaintiff in a suit to enforce its provisions and penalties. Public officers have capacity to sue commensurate with their public trusts and duties and need no statutory authorization.—Berrien Co. Treasurer v. Bunbury, 45 M. 79.

Employment of other person to conduct sales, when.

SEC. 94. (3917) In case the said county treasurer shall refuse or neglect to execute and file any such bond at the time and in the manner aforesaid, the Auditor General shall employ, in behalf of the State, some other person to conduct the sales of lands delinquent for taxes, and to receive payment therefor, under his direction, upon such person executing and filing with the said Auditor General, a similar bond with sureties as above mentioned, to be by him approved, conditioned for the faithful and prompt payment to the State Treasurer of all moneys which may come into his hands as the proceeds of such sales or otherwise, and a reasonable compensation for the services of such person shall be allowed and paid out of said proceeds.

Bond.

Conditions.

Compensation.

When bond is not properly approved it is the duty of the Auditor General to refuse it and to decline to allow the county treasurer to make the tax sale.—People v. Johr, 22 M. 461.

Authority to withhold from sale.

SEC. 95. (3918) If the Auditor General shall discover before the sale of any lands, as aforesaid, that for any reason they should not be sold, he shall cause the same to be withheld from sale; and if the error originated with the township or county officers the amount of such taxes shall be charged against the county from which the same was returned; if such error was made by a township officer the amount thereof shall be charged by the county treasurer to the township in which such error occurred. If there has been a change in the boundaries of any county or town in which the lands are situated after the return of such taxes, such rejected taxes shall be charged to the county to which the lands belong at the time of such rejection.

Taxes charged county and townships, when.

Change in boundaries.

The county is responsible to the State for the regularity of taxes returned, and in case any tax is found to be illegal and set aside by the proper State authority in the manner pointed out by law it is charged back to the county and the county is bound to make it good.—Auditor General v. Supervisors Monroe Co., 36 M. 71.

No outlawry as between State and county or between county and township. A township liable to the county for taxes rejected by the Auditor General is also liable for the interest legally chargeable to the county on such taxes.—Mason v. Hazelton Township, 82 M. 440.

Unauthorized charging back by clerk in Auditor General's department held not to be an abandonment of the petition for sale or of the right to a rehearing.—Auditor General v. Kanaar, 114 M. 602. Auditor General shall not cancel taxes assessed on railroad lands patented to land grant railroad companies unless upon decree of supreme court.—3977 C. L. '97.

The State is not authorized to charge back to the county because of injunction taxes returned delinquent until they have been rejected or held invalid by some competent authority; but where Auditor General has authority to reject them and does so for adequate causes the fact that he did not wait for a decree would not be important.—Auditor General v. Supervisors of Monroe Co., 36 M. 71. When exempt lands have been taxed Auditor General may reject taxes on his own motion, and may be compelled to do so by mandamus.—People ex rel. Throop v. Auditor General, 9 M. 134. The action of the Auditor General in charging back to a county certain taxes in the settlement with the county being the exercise of an official discretion belonging to an executive department of the State government is not subject to judicial review and cannot therefore be examined upon certiorari.—Supervisors of Midland Co. v. Auditor General, 27 M. 165. Taxes rejected by adjudication of court for want of lawful equalization may be charged back and reassessed as well as those rejected by the Auditor General.—Auditor General v. Gurney, 109 M. 472.

Provision contemplates rejection and annuling of the taxes, leaving them no longer in existence for any purpose.—No taxes can be charged back without putting an end to them.—People ex rel. Throop v. Auditor General, 9 M. 134. But see Sec. 96 for provision for reassessing.

Auditor General properly rejected taxes which were not lawfully imposed.—Chippewa Supervisors v. Auditor General, 65 M. 408.

See Secs. 73, 98.

Statement of rejected taxes.

SEC. 96. (3919) The Auditor General shall prepare and forward to the county treasurer a statement of such rejected taxes, and a description of the lands upon which the same were assessed; and such county treasurer shall lay the same before the board of supervisors at their next session thereafter, and if such taxes shall have been rejected or charged back by the Auditor General, except for the reason that such land was not subject to taxation at the time of assessment for such taxes, or that the taxes thereon had been paid, or that there had been a double assessment thereof, the board of supervisors shall cause the same to be reassessed upon the same land, and collected with the taxes of the then current year, and in the same manner. If such taxes cannot be properly reassessed upon the same lands, the board of supervisors shall cause the same to be reassessed upon the taxable property of the proper township.

Reassessment of rejected taxes.

Change of title no bar to reassessment.—Cooley on Taxation 311. Taxes charged back are to be reassessed upon the same lands if rejected for mere informality or upon the whole township if absolutely illegal.—People ex rel. Throop v. Auditor General, 9 M. 134. Reassessments must be made in accordance with the law in force without reference to the law as it stood when the original assessment was made.—Brevoort v. Detroit, 24 M. 322. If tax is originally void by reason of having been levied for illegal purpose, it is not subject to reassessment; but a judicial decision against the first assessment; based on errors and defects merely is no bar to reassessment.—Cooley on Taxation 312. Reassessment is a continuing power, not exhausted until an assessment is made which can be enforced.—Brevoort v. Detroit, 24 M. 322. But the charged-back list should be acted upon at the next session after its receipt by county treasurer, and if reassessment is not made in "the then current year," its validity is at least questionable.

In reassessing taxes upon the same land, the same details as to acreage, items of tax, etc., must be distinctly given as in the original assessment, and the reassessment must specify the year for which the taxes reassessed were first assessed; but no interest or other charges not included in the original assessment can be added in reassessment.

Reassessment for local improvement, see French v. Common Council of Lansing, 30 M. 379. In Brevoort v. Detroit, 24 M. 322, a legislative act provided for a new assessment in certain cases where former assessment had been vacated or held invalid. Held if the difficulty was that the sums assessed did not constitute any just or equitable charge for public purposes upon the property upon which it was sought to be imposed, it is quite clear that the legislature could not make it such a charge; but if the defect consisted of some irregularity of proceeding in consequence of which a just and equitable claim has failed to be legally imposed there can be no good reason why the legislature should not retrospectively supply the oversight or cure the irregularity. In Byram v. Detroit, 50 M. 56, held that the legislature can authorize reassessment of paving tax to pay for work done in good faith where previous assessment therefor had been held void.

In Mariette Township v. Smith, Mich. Mandamus Cases 135, mandamus was denied to compel respondent (county treasurer) to pay over certain moneys claimed to be due the township, it appearing that certain taxes

charged back by Auditor General had been ordered reassessed, the township declining to make the assessment and the amount remaining charged against the township.

As to reassessment of drain taxes charged to county see Mason v. New Haven Township, 82 M. 435; Mason v. Hazleton Township, 82 M. 440. Further as to reassessment see Tweed v. Metcalf, 4 M. 579.

Detached lands.

SEC. 97. (3920) It shall be the duty of the board of supervisors to furnish to the Auditor General a list of all taxes which shall have been rejected or charged back to their county by him, upon lands which shall have been detached from such county subsequent to the time when such taxes were assessed, and the Auditor General shall thereupon credit to such county the amount which he may have so far charged back, and charge the same to the county in which such lands may then be situated: *Provided*, Such taxes shall not have been previously paid or reassessed.

Proviso.

Errors discovered before conveyance.

SEC. 98. Am. Act 154 of 1895. (3921) Am. Act 262 of 1899. Whenever any lands returned to the office of the Auditor General, or to the county treasurer during the life of the tax law of eighteen hundred ninety-one, shall have been sold on account of non-payment of taxes thereon, if the Auditor General shall discover, before a conveyance of said land is executed and delivered:

If not subject to taxation.

First, That the land so sold was not subject to taxation at the date of the assessment of the taxes for which it was sold; or

If taxes paid.

Second, That the taxes had been paid to the proper officer within the time limited by law for the payment or redemption thereof; or

Illegal sales.

Third, That such sale was in contravention of any of the provisions of this act; or

If certificate of "no taxes."

Fourth, That a certificate that no taxes were charged against said lands has been given by the proper officer, within the time limited by law for the payment or redemption thereof,

Conveyance withheld.

the Auditor General shall withhold a conveyance of such lands, and shall, on demand, cause the money paid therefor to be refunded to the purchaser, with interest thereon at six per cent per annum: *Provided*, That in the last mentioned case the person in whose behalf such certificate was given shall, at the time of presenting such certificate to the Auditor General, pay to the State Treasurer, on the statement of the Auditor General, all taxes and charges due to the State upon such land at the time such certificate was issued. If the discovery is not made until after the conveyance has been executed and delivered, a certificate of error may be issued in proper form for record; and the deed, if not recorded, shall be surrendered when the purchase money is refunded. If the deed has been recorded the money shall be refunded on a recorded release from the holder of the tax deed.

Proviso.

Certificate of error.

Refunding on release.

In People ex rel. Sweet v. Adam, Auditor General, 3 M. 427, the court held that the act of 1843, containing the same provision as this section, conferred upon the Auditor General judicial powers into the proper exercise of which the court cannot inquire on motion for mandamus, and that if the relator was dissatisfied his remedy was certiorari.

Mandamus is the proper remedy to compel Auditor General to issue a

certificate of error and to determine the validity of his reasons for refusal.—Hubbard v. Auditor General, 6 Det. Leg. News 258. Mandamus will not lie to compel a State officer to perform any but an unquestionable and legally defined duty.—Bresler v. Butler, 60 M. 40.

SUB. 2. A sale for taxes for a year in which it was shown the tax was twice assessed and once paid is invalid.—Rayner v. Lee, 20 M. 384. Where taxes had been paid before sale on part of the land returned, Auditor General properly withheld conveyance of the entire description, which had been returned and sold without excepting the part on which the taxes were paid.—Kneeland v. Auditor General, 113 M. 63. Certificate of error properly introduced in evidence to show deed had been canceled.—Wood v. Bigelow, 115 M. 123. Certificate was issued by Auditor General on presentation of receipt showing taxes paid before sale. Purchaser refused to recognize certificate and brought action of ejectment. Defendants had verdict below. Affirmed.

Payment of taxes may be proved by parol.—Hammond v. Hannin, 21 M. 374. Where a city council assuming the invalidity of a sidewalk tax for a certain year ordered the tax reassessed in the following year and the land was sold for the taxes of both years, and the owner in due season sought to redeem from the second sale, the Auditor General was justified in canceling the former sale and issuing a certificate of error.—Youngs v. Auditor General, 118 M. 550.

SUB. 3. No title can be valid which is acquired against law.—Attorney General v. Smith, 31 M. 359. Where there is a discrepancy between the description in the recorded plat and that in the tax deed, a certificate of error canceling the deed may be issued.—Jackson v. Sloman, 117 M. 126. Attempts to buy off outstanding claims do not necessarily admit their validity.—Chapin v. Hunt, 40 M. 595.

Sale under void publication is made in contravention, etc., within the meaning of Sub. 3. It would not be contended that if relator's deed was held void by some court that he would not be entitled to have his money refunded. Neither will it be contended but what it would be the duty of a court to hold it void in a proper proceeding. We do not see how any good purpose can be served in requiring such a proceeding to be brought before the relator could obtain his money.—Gurd v. Auditor General, 6 Det. Leg. News 668.

A land owner held not estopped by the entry of a decree in proceedings instituted by him attacking the validity of a decree entered in tax proceedings from testing the validity of a sale made by the Auditor General subsequent to the decree.—Conley v. Auditor General, 6 Det. Leg. News 947.

SUB. 4. Where owner had written county treasurer to ascertain amount of his taxes and on receiving reply stating that all his taxes were paid except on a designated parcel had paid the amount stated, the Auditor General was warranted in refusing to convey to an applicant a parcel sold for unpaid taxes which were payable when the county treasurer had advised the owner as above. Owner having called for and paid all demanded cannot lose land by mistake of officer.—Hand v. Auditor General, 112 M. 599. Where owner in reliance upon statement furnished by city treasurer pays the amount of tax shown, land cannot be sold for taxes which failed of payment because of such misstatement.—Hough v Auditor General, 116 M. 663. Certificate of error ordered issued where it was made to appear that owner had failed to pay relying on certificate of county treasurer that the taxes had been paid.—Carpenter v. Jones, 117 M. 91. Defense that owner was prevented from paying taxes by statement of officer that no taxes were due cannot be interposed to a bill in equity filed by purchaser under tax decree. Owner must avail himself of his statutory remedy (as provided in above section or in Sec. 70).—Kneeland v. Hyman, 118 M. 56; Kneeland v. Wood, 117 M. 174.

No limit of time is fixed within which Auditor General may issue certificate of error as provided in above section. Certificate may be issued whenever showing is made and Auditor General may satisfy himself by any competent proof.—Kneeland v. Wood, 117 M. 174. There is no equity in seeking to avoid both lien and debt.—Waldron v. Murphy, 40 M. 668.

Irregularities not prejudicial to property rights of owner shall not invalidate tax.

SEC. 99. (3922) No tax assessed upon any property, or sale therefor, shall be held invalid by any court of this State on account of any irregularity in any assessment, or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any person other than the owner, or on account of any other irregularity, informality, or omission, or want of any matter of form or substance in any proceeding that does not prejudice the property rights of the person whose property is taxed; and all proceedings in assessing and levying taxes and in the sale and conveyance therefor, shall be presumed by all the courts of this State to be legal,

Records etc. evidence.

Absence or omission of records, etc.

Regularity presumed.

Signing of records, etc.

Auditor General's deed unimpeachable.

until the contrary is affirmatively shown. All records, statements and certificates herein provided for shall be *prima facie* evidence of the facts therein set forth. The absence of any record of any proceeding or proceedings, or the omission of any mention in any record of any vote or proceeding, or of mention of any matter in any statement or certificate that should appear therein under the provisions of any law of this State, shall not affect the validity of any proceeding, tax, or title depending thereon, provided the fact that such vote or proceeding was had or tax authorized is shown by any other record, statement or certificate made evidence by the terms of this act or any other law of this State. No tax, or sale of property for any tax, shall be rendered or held invalid by showing that any record, statement, certificate, affidavit, paper or return cannot be found in the proper office; and unless the contrary is affirmatively shown, the presumption shall be that such record was made, and such certificate, statement, affidavit, paper or return was duly made and filed. Where any statement, certificate, or record is required to be made or signed by a school district board or a township board, such statement, certificate or record may be made and signed by the members of such boards, or a majority thereof, and it shall not be necessary that other members be present when each signs the same. The provisions of this section shall not be construed to authorize any showing impeaching the validity of any deed executed by the Auditor General under the provisions of this act, but such deed shall be held absolute and conclusive as herein provided.

Curative statutes can never cure want of jurisdiction.—Hart v. Henderson, 17 M. 222; Township of Caledonia v. Rose, 94 M. 216. But only provides that irregularities or omissions which are not jurisdictional and do not prejudice the property owner will not void tax or sale.—Auditor General v. Keweenaw Ass'n, 107 M. 405. Irregularities that do not avoid sales.—See notes and cases at 9129 C. L. '97.

No act legalizing any tax or assessment or any tax or assessment roll shall be construed as legalizing any defect not distinctly set forth in the act.—3985 C. L. '97. Section does not relieve against defects which go to the jurisdiction of the body authorizing the levy.—Auditor General v. D. S. S. & A. Railway Co., 116 M. 122.

REVIEW: When no changes have been made by the board of review in the assessment roll prepared by the supervisor the roll is not rendered invalid because the board of review have not written the figures of the assessor in the columns prepared for that purpose.—Ball v. Ridge Copper Co., 118 M. 7. Where there is no claim that a board of review acted fraudulently in assessing land and there is sufficient testimony to support the finding of the lower court that the board did not act illegally or inequitably in fixing such assessment, the finding will not be disturbed.—Aurora Iron Mining Co. v. City of Ironwood, 5 Det. Leg. News 828.

While the board of review have no right to change values after the time provided by law, yet in the absence of proof that the board actually acted on question of value after the lawful time, the mere fact that the clerical work of setting down such values in the proper column was not completed during a meeting of the board will not render the tax invalid.—The date of the certificate of the board of review attached to the roll is not important as bearing upon the question of the validity of the taxes.—Auditor General v. Ayer, 6 Det. Leg. News 688.

APPORTIONMENT: Where charter requires council to apportion tax among wards and council instructed supervisors with assistance of recorder to make apportionment, held that to invalidate it must be shown that injury resulted to the person assessed.—Fay v. Wood, 65 M. 390. Form of record of apportionment is sufficient if it appears that just share is distributed among townships.—Boyce v. Sebring, 66 M. 210. Omission of signature of chairman and clerk to record of proceedings may be supplied by them during their then term of office.—Record of proceedings of board of supervisors which does not specifically show apportionment of State tax in record of report thereon is sufficient if defect is supplied by the report as a whole.—Resolution "that there be levied on the taxable property of county for county purposes a tax of 1¼ per cent on the valuation of the several rolls of said county, making

a total county tax of $—— (amount given)," does not affect validity of tax where it does not appear that this was the only action or record on the subject, though the sufficiency is questionable.—Boyce v. Auditor General, 90 M. 214. Resolution providing that a specified amount of State and county tax should be assessed on rolls of the several townships, naming them and placing opposite the name of each the amount to be assessed and giving total of said taxes respectively, was sufficient compliance with the statute, it not being shown that the apportionment was unequal.—Hoffman v. Lynburn, 104 M. 494.

EQUALIZATION: Committee to equalize the assessment rolls reported to board; report adopted. Held made action of committee that of board and was sufficient.—Tabulated record of assessment in all townships, showing amount added to or deducted from in equalizing, followed by aggregate of both real and personal property plus amount added or minus amount deducted, followed by final totals, held sufficiently definite.—Boyce v. Sebring, 66 M. 210. Where record of equalization shows only entry of the aggregate valuation of real and personal property of each township as determined by the board, the presumption is that no additions or deductions were found necessary or made.—Chamberlain v. City of St. Ignace, 92 M. 332; Goudreau v. City of St. Ignace; Brooks v. same; Orth v. same, 97 M. 413. Failure of clerk of board of supervisors to sign record of equalization and apportionment will not affect validity of township and school taxes.—Clerk of county and of board when record of equalization was made was deputy county clerk at time of trial, and rights of third parties had not intervened; Held proper to permit to amend the record by affixing the omitted signature.—Sheldon v. Marion, 101 M. 256. Where record of equalization shows aggregate real estate as assessed in each township and amount of personalty and whole amount of taxable property as equalized, and nothing to indicate that equalization was based on aggregate of real and personal or that it was not based on the realty alone, it will be presumed that it was based solely on the realty.—Where record shows amount of real estate assessed, amount of assessed personalty and the amount of taxable property as equalized, and the amount added to or deducted can be readily ascertained by computation, held sufficient compliance with the statute.—Auditor General v. Ayer, 109 M. 694. Where supervisors add to or deduct from valuation of real estate without reference to total taxable property, held sufficient.—Auditor General v. Longyear, 110 M. 223. Where record of equalization shows total valuation of property as assessed and total as equalized, the fact that valuation of personal property and real property are not separately entered will not destroy the presumption that additions or deductions were upon real property; and absence of dollar sign in record does not invalidate where the figures are separated in such manner as to indicate dollars and cents.—Auditor General v. Sparrow, 116 M. 574. The record failing to show that board of supervisors changed values, the fact that it did not show the additions and deductions made in equalizing does not make the record insufficient.—Auditor General v. Ayer, 6 Det. Leg. News 683.

ROLL AND WARRANT: Special tax placed in separate column on tax roll does not entitle any one to complain, as no rights could possibly be prejudiced thereby.—Wall v. Trumbull, 16 M. 228. Objection that there is no dollar mark opposite the valuation and that the figures are so written as to be divided by a red line so as to leave an uncertainty as to the amount is not well taken where the amount of the taxes are properly carried out.—First National Bank of St. Joseph v. Township of St. Joseph, 46 M. 526. See also Bird v. Perkins, 33 M. 28. The fact that headings of pages of tax roll were not filled out with name of township and county does no invalidate roll where names of township and county were printed on outside of book.—Auditor General v. Keweenaw Ass'n, 107 M. 405. Tax roll not invalidated by fact that supervisor's warrant directs the payment of the 1 per cent which he is authorized to add to avoid fractions to reimburse a delinquency of the former year growing out of an error in not adding a sufficient amount of percentage.—Grand Rapids v. Welleman, 85 M. 234. The fact that the collector used the original tax roll instead of a copy as the Muskegon charter required, and that the treasurer failed to verify his statement of uncollected taxes within the time specified, does not defeat the taxes in the absence of any showing that they were unjust.—Auditor General v. Hutchinson, 113 M. 245. Failure of assessing officer to prepare assessment and tax roll in exact form prescribed by statute, in that taxes were spread on tax roll instead of on assessment roll, did not prejudice property rights of taxpayers, and defect is cured by Sec. 99.—Ludington v. City of Escanaba, 115 M. 288. The fact that no warrant was attached to tax roll by supervisor held not to render the taxes invalid or discharge the lien.—Auditor General v. Sparrow, 116 M. 574. Warrant not defective if made to township treasurer by title and name omitted.—Loud & Sons Lumber Co. v. Hagar, 118 M. 452.

Where tax roll showed error in aggregate of taxes opposite certain parcel, which county treasurer corrected before sale, held that as this could not injure the owner it must be disregarded.—Case v. Dean, 16 M. 12. But this holding should not be understood as giving county treasurer authority to make changes in the roll or Tax Record.

Where tax roll described land as "T. 6 R. 6" and there was but one T. 6 R. 6 in the township, description held sufficient.—Dumphy v. Auditor General, 6 Det. Leg. News 1045. In West Michigan Lumber Co. v. Dean, 73 M. 459, supervisor attached warrant to original equalized assessment roll and delivered it to the treasurer. Held, that it conferred authority to seize property to satisfy tax.

STATUTORY TIME—RETURNS: The proceedings required by law and the filing of the treasurer's bond having taken place after the time desig-

nated by law, but before the time required for the handing over of the assessment roll; Held, that the delay was immaterial. Delay beyond the time required by law in appending the warrant to the assessment roll furnish no ground of relief.—Hubbard v. Winsor, 15 M. 146.

Statutory time for doing an act is directory where time is not fixed for purpose of giving a party a hearing or for some purpose important to him.—Fay v. Wood, 65 M. 390. A tax title is not invalidated merely by the township treasurer's neglect to file his bond as collector of State and county taxes within the prescribed time, if it appears that he actually filed his bond and received the tax roll, and that his right to it had not been contested.—A tax title is not invalid merely because the original return from the township treasurer to the county treasurer had been sent to the capitol instead of being retained in the county treasurer's office as it should have been.—Stockle v. Silsbee, 41 M. 615. Where the township treasurer's return does not show that demand was made for taxes but is in statutory form, held sufficient, as if personal demand was necessary it must be presumed to have been made.—Dickison v. Reynolds, 48 M. 159. Failure of county treasurer to enter delinquent list on books does not invalidate the tax if the delinquent list was put in permanent form and preserved in county treasurer's office.—Auditor General v. Keweenaw Ass'n, 107 M. 405. Failure of collector to make statement under oath of all moneys received by him as collector does not render proceedings to sell void; such oath is required to secure an accurate accounting of all moneys in collector's hands and has no reference to the return of land for delinquent taxes.—Tweed v. Metcalf, 4 M. 579. Failure to make such statement does not prejudice taxpayer.—Boyce v. Stevens, 86 M. 549.

IRREGULARITIES: An irregularity is such a defect in legal proceedings as may be waived; a nullity is one that cannot.—Jenness v. Lapeer Circuit Judge, 42 M. 469. A blunder that is so evident as to correct itself not entitled to consideration.—Smith v. Lloyd, 29 M. 381. Objection based on manifest clerical error which corrects itself held frivolous; justice ought not to stumble at straws.—Peck v. Houghtaling, 35 M. 126. One cannot complain of an error in his favor.—Kelso v. Saxton, 40 M. 666. The party alleging error must show error to his prejudice.—Louden v. E. Saginaw, 41 M. 18. Error will not be presumed; it must be affirmatively made out.—People v. Scott, 56 M. 154. Irregularities in assessment when not prejudicial to protestant give no right of recovery.—White v. Millbrook, 60 M. 532. The time has gone by if it ever was when the proceedings of taxing officers are to be criticized with microscopic nicety and the exact time and method of every step examined to detect a departure from the law, however insignificant or unintentional. It is probable that in no tax case have all the proceedings been exactly and punctiliously correct, but they are sufficiently so for legal purposes in any case if no error is committed which can prejudice the person taxed.—Stockle v. Silsbee, 41 M. 615. In matter of descriptions see Johnstone v. Scott, 11 M. 232; Wright v. Dunham, 13 M. 414; Bird v. Perkins, 33 M. 28; Wilt v. Cutler, 38 M. 189.

Irregularities in assessment do not defeat a tax if they do not prejudice the person taxed.—Stockle v. Silsbee, 41 M. 615. Irregularities in the prior proceedings which do not prejudice the property rights of the person whose land is taxed will not defeat the claim of the State. Thus, it is no defense to an entry of a decree against the land that the warrant was annexed to the tax roll delivered to the collecting officer; that the return of the delinquent taxes was not verified; or that a majority of the board of review did not sign the certificate attached to the assessment roll.—Auditor General v. Sparrow, 116 M. 574. Any irregularity or omission in the proceedings to levy or collect a tax which is not jurisdictional and does not prejudice the rights of the property owner will not render the tax invalid. It not being shown that the respondent had any personal property in the township, its rights were not prejudiced by omission of word "unknown" in assessment roll.—Auditor General v. Keweenaw Association, 107 M. 405.

MISNOMER: It does not mislead real owner.—Fletcher v. Post, 104 M. 424. Tax not invalid because assessed in name of other than owner.—Auditor General v. Keweenaw Ass'n, 107 M. 405. Assessment against "Ellen Marcier" instead of "Ellen Macier" held within the rule of idem sonans and not to invalidate the tax.—City of Detroit v. Macier, 117 M. 76. Land assessed to "H. M. Loud & Sons" instead of proper name of corporation; Held, would not render tax invalid and would authorize levy upon personal property of corporation.—Loud & Sons Lumber Co. v. Hagar, 118 M. 452. Tax assessed by initials of corporate title to resident corporation who owned and occupied the property is not invalid because not assessed to full name.—Lumber Co. v. Village of Oscoda, 97 M. 221.

RECORDS, FILES, ETC.: Auditor General may require copies gratis.—11238 C. L. '97. Records are public property; penalty for mutilation or wrongfully retaining.—11361 C. L. '97. Restoration of lost records.—10276 e. s. C. L. '97. Absence of records in town books showing assessors were sworn does not furnish prima facie evidence that they were not.—Sibley v. Smith, 2 M. 486. Objected to record of proceedings of supervisors that it did not show who constituted the board nor that a quorum was present; Held, presence of supervisors or at least a quorum would be presumed.—Lacy v. Davis, 4 M. 140. Certificates to assessment roll are necessary only because they are required by statute; and the legislature may provide in express terms that a tax sale shall not be void for defect in or omission of the certificate. Whatever it may dispense with in advance it may retrospectively.—Sinclair v. Learned, 51 M. 335. See also Burt v. Auditor General, 29 M. 126. Where a sum of money has been lawfully voted to be raised by taxation for township purposes, the

failure of the board of supervisors to direct the levy would not invalidate the action of the supervisor in spreading it upon the roll.—Upton v. Kennedy, 36 M. 215. The real purport and effect of the statute is that sale shall not be void because return or other files or records are not found in the proper place, unless it is shown that such files or records never existed.—Upton v. Kennedy, 36 M. 215. The absence of official records from the places assigned by law for their keeping does not support the presumption that they never existed; the contrary is presumed.—Hogelskamp v. Weeks, 37 M. 422. As to time of making clerk's certificate to supervisors; when conclusive, etc.—Smith v. Crittenden, 16 M. 152. Where tax ordered by board of supervisors is not certified to by township clerk, burden is upon contestant to show that such tax was not originally authorized by competent authority.—Auditor General v. McArthur, 87 M. 457. "No tax or tax sale shall be held invalid" does not apply to warrant or to anything else except "tax" and "sale."—Muskegon v. Martin Lumber Co., 86 M. 625. Does not apply to proof of publication.—Benedict v. Auditor General, 104 M. 269. Record of equalization not invalid because of omission of dollar mark.—Auditor General v. Sparrow, 116 M. 574. A tax deed given upon a sale which included township and school taxes is not rendered invalid by showing that the board of supervisors did not direct any taxes for township or school purposes to be assessed in the township for that year.—Robbins v. Barron, 33 M. 124.

Writings are not admissible in evidence as public records without proof of their official character.—Hall v. People, 21 M. 456. Whenever the law requires written evidence of the action taken by officers in tax proceedings the record becomes the only legal and proper evidence of these facts; but this does not exclude entirely the usual presumption in favor of the regularity and honesty of official action.—Mills v. Township of Richland, 72 M. 100.

Tax sale not void because decree was not entered in record book of decrees and did not contain a description of the property.—Hooker v. Bond, 118 M. 255. Clerk's omission to record it does not invalidate a decree properly signed.—Hoffman v. Pack, Woods & Co., 6 Det. Leg. News 954.

The loss of papers relating to the proceedings on the Auditor General's petition will not in a collateral proceeding defeat the jurisdiction of the court or render void the decree.—Hoffman v. Pack, Woods & Co., 6 Det. Leg. News 954. Testimony of county treasurer and clerk, together with the record of accounts between those officials that contain items which must have been taken from the report, held sufficient to show that report of sale was filed.—Ibid.

Whenever, in the opinion of the board of supervisors of any county in this State, from the defaced or mutilated condition of any assessment rolls, returns of township treasurers, or other papers on file, under the provisions of law, in the office of the treasurer of such county, and for their better preservation, it shall be necessary that the same be copied or bound, or both, it shall be lawful and shall be the duty of such board of supervisors to authorize and order the copying or binding, or both, of such archives.—2508 C. L. '97. Whenever the board of supervisors of any county shall order the copying of any rolls or other papers, as provided in section one of this act, the treasurer of such county shall have the supervision of such work, and shall employ some proper person or persons to perform the same, who shall, before entering upon the discharge of such duty, subscribe an oath to perform the same in a true and faithful manner; and it shall be the duty of such county treasurer to compare all rolls or papers so copied, with the originals, and shall attach to each separate copy, roll or other paper, his certificate that the same is a true copy of the original roll or other paper, and that such copy was made by a person duly authorized under the provisions of law to make the same.—2509 C. L. '97. Any copy of any assessment roll, tax roll, township treasurer's return or other paper, made and certified under the provisions of this act, shall be valid and lawful as evidence in any court as the original would have been.—2510 C. L. '97.

Duties of prosecuting attorney.

SEC. 100. (3923) It shall be the duty of the prosecuting attorney of each county to give his counsel and advice to the county treasurer, the township treasurers, and the supervisors of the county whenever they or any of them may deem it necessary for the proper discharge of the duties imposed upon them in this act free of charge.

See Sec. 90.

Deed to deceased person, etc.

SEC. 101. (3924) In all cases of sale of lands for taxes, if the purchaser or his assigns shall die before a deed shall be executed on such sale, the deed may be executed by the Auditor General, to and in the name of the deceased person, if such deceased person being still alive would be entitled to a deed,

which deed shall vest the title in the heirs or devisees of such deceased person, in the same manner, liable to like claims of creditors and other persons as if the same had been executed to said deceased person immediately previous to his death, or the executor or administrator may assign the certificate of purchase and the deed may issue to the assignee thereof, and in like cases which have heretofore occurred, the same rule shall apply, and all deeds heretofore issued in the name of any person deceased who, if living at the time of the execution thereof, would have been entitled thereto, shall have like effect as above provided.

Return of delinquent tax on homestead and part paid State lands.

SEC. 102. (3925) Am. Act 262 of 1899. The county treasurer shall, at the same time when he makes his return of delinquent lands to the Auditor General, make a similar return to the Commissioner of the State Land Office of all homestead and part paid State lands, the fee of which is in the State, the taxes upon which have not been collected, with a statement of the amount thereof. The Commissioner of the State Land Office shall provide suitable books, and enter in the same the description of every parcel of land so returned to his office, and the taxes thereon. The person holding such interest in any parcel of said lands shall, on or before the first day of July following such return, pay to the State Treasurer the taxes assessed thereon, with interest at the rate of one per cent per month or fraction thereof from the first day of March last preceding; and in default thereof the certificate of purchase of such parcel shall become void and such land shall be subject to sale and redemption in the same time and manner as lands forfeited for non-payment of interest; and no patent shall be made of such lands until all taxes thereon are paid.

Forfeiture for non-payment.

Report of taxes paid on State lands.

SEC. 103. (3926) The Commissioner of the State Land Office shall, on or before the first day of May and November in each year, make out and furnish to the Auditor General a statement containing a description of the lands upon which the taxes have been paid, and the amount of such payments, and shall, at the same time, transmit to each county treasurer a copy of such statement so far as the same relates to his county.

Credit of taxes.

The Auditor General shall credit to each county its proper part of such taxes, and the county treasurer shall credit each township with its share of such amount.

Lien for improvements.

SEC. 104. (3927) If any person dispossessed of lands purchased in pursuance of the provisions of this act shall have made improvements thereon, he shall be entitled to recover what such improvements are worth, and shall have a lien on such lands therefor, and may enforce the same by bill in equity where no other provision is made by law.

Sec. 10995 C. L. '97 relative to compensation for improvements in action of ejectment applies only to lands described in plaintiff's declaration and in the deeds or other instruments through which the defendant claims.—King v. Potter, 18 M. 134. County treasurer became purchaser at sale conducted by him; purchase held to be a nullity and purchaser not entitled to improvements made by him.—Clute v. Barron, 2 M. 192. Lien for improvements is to be enforced in supplementary proceeding in chancery.—Weimer v. Porter, 42 M. 569. Evidence of the value of improvements is properly excluded in

action of ejectment where defendant neglects to file a claim for compensation therefor under 10996 C. L. '97.—Newaygo Mfg. Co. v. Echtinaw, 81 M. 416.

Wanton expenditures for improvements not made in good faith.—McCreedie v. Buxton, 31 M. 383. Plaintiff having gone upon the land and made improvements with the knowledge that the title to the land was in the railway company, and that it claimed ownership, could not upon failure of his title recover the value of the improvements made.—When the rightful owner has obtained possession of the property without resorting to an action at law he is not liable in an action at law for the value of the improvements made by another. Sec. 10995 C. L. '97 applies only to action of ejectment.—Lemerand v. F. & P. M. R. R. Co., 117 M. 309.

Statutes allowing compensation for improvements when defendant in ejectment has been in possession, etc., cannot be invoked in behalf of one who entered as a tenant.—Wolf v. Holton, 92 M. 136. The fact that the occupant by exercising diligence might have discovered that he had no title does not necessarily negative good faith.—Petit v. F. & P. M. R. R. Co., 5 Det. Leg. News 889.

To enable defeated holder of tax title to enforce a lien for improvements the title must have been adjudged against him in a proper action. He must then resort to equity proceedings to have the amount of his lien determined, and its collection enforced. Statute of limitations does not run against such lien before the judgment is rendered declaring the title invalid. Such right is not affected by subsequent tax laws.—Tillotson v. Circuit Judge, 97 M. 585. One taking possession under tax deed in good faith and making improvements may recover for such improvements if his title prove invalid.—Croskery v. Busch, 116 M. 288. Provision as to improvements applies to homesteaders holding under Sec. 131.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444. Further as to recovery for improvements see Rawson v. Parsons, 6 M. 401; King v. Potter, 18 M. 134; VanDenbrooks v. Correon, 48 M. 283; Guild v. Kidd, 48 M. 307; Baldwin v. Cullen, 51 M. 33; Clark v. Green, 62 M. 355.

Reorganization of counties and townships.

SEC. 105. (3928) In case of the organization of a new county after the time for making the assessment roll, and prior to the return of the township treasurer, such new organization shall in no way affect the assessment, collection or return of taxes for that year on any lands attached to the new county. No division of a township after the time for making the assessment roll, and prior to the return of the township treasurer, shall in any way affect the assessment, collection and return of such taxes; but such taxes shall be assessed, collected and returns made as though there had been no such division. If lands are detached from any county after the taxes thereon are returned to the Auditor General, and any such taxes are afterwards rejected or set aside, the county from which they were detached shall receive credit, and the county to which they are attached shall be charged, as may be proper under the provisions of this act.

Board of supervisors have no power to alter boundaries of townships when fixed by legislature.—Township of Harrison v. Board of Supervisors, 117 M. 215. As to new townships.—Comins v. Harrisville, 45 M. 442. Assessment to pay interest on bonds after division of township.—First National Bank v. Supervisors, Mich. Mandamus Cases 1346.

As to organization of new counties see Carleton v. People, 10 M. 250; Bay County v. Bullock, 51 M. 544; Attorney General v. Marr, 55 M. 445; Attorney General v. Weimer, 59 M. 580. As to adjustment of tax accounts between new and old counties see Clare County v. Auditor General, 41 M. 182; Bay County Supervisors v. Arenac Supervisors, 111 M. 105.

Adjustment of rights and liabilities on division of municipal territory.—3462 C. L. '97.

Payment before sale.

Part payment does not stay proceedings.

SEC. 106. Am. Act 154 of 1895. (3929) The taxes on any lands returned as delinquent may be paid to the county treasurer or to the State Treasurer at any time prior to the day of sale. After such petition is filed with the county clerk, payment of part of the taxes therein specified shall not stay proceedings thereon to enforce payment of such part of such taxes as are not paid, but such proceedings shall continue as to all unpaid taxes as herein provided.

Payment of taxes to State Treasurer is made through Auditor General. See Secs. 53, 59, 138.

Municipal charter provisions.

Municipalities included.

Board of review in cities.

Sessions and proceedings.

Certification of rolls.

Oath of office.

SEC. 107. (3930) This act shall be applicable to all cities and villages where not inconsistent with their respective charters. With such exceptions, the provisions herein as to supervisors, township treasurers, and boards of review, shall include all assessing and collecting officers, and all boards whose duty it is to review any assessment roll. The word township may include city, ward or village. When, by the charter or ordinances of any city or village, delinquent taxes or assessments are returned with other taxes to the county treasurer, such city or village shall not be entitled to payment of or credit for the same until the money has been received, notwithstanding anything in their respective charters to the contrary: *Provided*, That in any incorporated city, the charter of which does not provide for a board of review, such board shall consist of the several supervisors or other officers making the assessment, the city attorney, and additional members to be appointed by the common council, who shall not be aldermen, equaling the number of supervisors or assessing officers. The session of said board of review shall be held at the council room on the same days as designated in this act for the meeting of the township board of review, and the proceedings thereof conducted, as near as may be, in the same manner. Said board shall elect a chairman and clerk, who shall certify to the correctness of the several assessment rolls when completed, substantially as the form prescribed in sections twenty-nine and thirty of this act. The appointed members of said board of review shall take the constitutional oath of office, which shall be filed in the office of the city recorder or clerk.

Levy of municipal tax exceeding the aggregate amount limited by the charter for a single year is illegal and cannot be sustained.—Wattles v. Lapeer, 40 M. 624; Connors v. Detroit, 41 M. 128. Charter limitation of amount "raised by taxation" includes excess voted by freeholders.—Schneewind v. Niles, 103 M. 301. But judgment against municipalities should be assessed though such assessment would make total exceed charter limit. —Hammond v. Place, 116 M. 628. Tax to pay interest on city bonds to take stock in water supply company.—8516 C. L. '97. As to assessment to pay judgment against a city see Shippey v. Mason, 90 M. 45. A city tax voted without observing the charter requirements to enter at large upon the minutes of the council any act, proceeding, etc., is invalid.—Pontiac v. Axford, 49 M. 69. Where charter requires common council to determine by resolution the amount to be raised for contingent fund and also for interest fund, and council directed a gross sum for both, held that failure to observe charter requirements rendered tax void.—Fay v. Wood, 65 M. 390. When the mode of assessments is prescribed by the charter or by ordinances adopted under its authority, measure of power is limited thereby.—Whitney v. Village of Hudson, 69 M. 189.

Where the charter provides for apportionment of school taxes by the county clerk after assessment, review and certificate of city clerk, action is not dependent upon equalization by the board of supervisors.—Chamberlain v. City of St. Ignace, 92 M. 332.

Mandamus will not lie to compel the officers and common council of a city to pay a judgment out of moneys on hand when such moneys were raised and are required for other purposes; the creditor's remedy being under the statute requiring such judgment to be spread upon the tax roll.—Griswold v. Common Council of Ludington, 117 M. 317. Assessment in cities and villages for fire department.—3477 C. L. '97. As to limitation of municipal taxation see Arbuckle, Ryan & Co. v. City of Grand Ledge, 6 Det. Leg. News 860.

REVIEW: In Darmsteatter v. Moloney, 45 M. 621, under Detroit charter requiring assessor's certificate to assessment roll, it was held where assessor is the officer to present the roll to the board of review and is himself a member of the board, the roll does not need to be authenticated by his

certificate. A city charter having provided for a board of review which has final jurisdiction of appeals of assessment of city taxes, the question whether the assessment is excessive is not for the court to try.—Williams v. Saginaw, 51 M. 120. Where by law taxpayers have the right to present their claims for reduction of taxation or valuation in writing and to make their proofs in support of such claim by affidavit, the board of review have no power to refuse to consider such claim unless the claimants appear in person and submit to oral examination.—McMoran v. Wright, 74 M. 356. Where charter provides that board of review during certain sessions may change values and that after that time, it shall not increase any assessment, an increase after the period will void the assessment and the taxes levied thereunder.—Auditor General v. Sessions, 100 M. 343. In Avery v. E. Saginaw, 44 M. 587, it was held that the city board of review cannot increase an assessment without notice to the party assessed and giving him opportunity to be heard. But the provisions of the charter of any other city might vary this decision in a similar case.

A sewer assessment will not be set aside on the ground that the construction of the sewer was not embraced within a report at the suit of one who did not avail himself of the right to be heard thereon before common council which by the charter was constituted a board of review with power to correct, set aside or confirm the assessment.—Nelson v. Saginaw, 106 M. 659.

As to discretion of common council to levy taxes for city purposes, see Water Commissioner v. Common Council of E. Saginaw, 33 M. 164. Collection of general tax for proper city or village purposes will not be restrained on the ground that it was rendered necessary by improper use of funds.—Clee v. Village of Trenton, 108 M. 293. Further as to municipal taxation see Mitchell v. Negaunee, 113 M. 359; Pioneer Iron Company v. Negaunee, 116 M. 430; People v. Mahaney, 13 M. 495.

SYNOPSIS OF TAX PROVISIONS OF ACT 3 OF 1895 PROVIDING FOR INCORPORATION OF VILLAGES: 2684-2955 C. L. '97. All villages subject to provisions of act.—2684, 2941. Election of treasurer and assessor.—2690. Clerk to report amount of taxes to be raised to treasurer.—2732. Duties of treasurer.—2735 e. s. Assessor shall perform such duties in relation to assessing property and levying village taxes as are prescribed by act.—2746. Imposition of tax or assessment requires two-thirds vote of trustees elect.—2752. Assessment for sidewalks.—2778; for street improvement.—2780; for grading.—2784; for paving, bridges and culverts.—2786-7; for sewers, drains and watercourses.—2793-2801. Abatement of nuisance to be assessed against premises.—2818. Assessment for cemeteries.—2824. Public improvements—board of assessors—special assessments.—2831-51; Act 39 of 1899. General corporation taxes: Purposes and limit.—2852-8; assessment.—2859; review.—2860-3; certification by council.—2864; apportionment and collection.—2865-8; return of delinquent real property.—2869; sale and redemption.—2870; suit for personal taxes.—2871; voting additional expenditures.—2874; appropriation of private property—assessment for benefits.—2929; enforcing special assessments.—2945. Village charters will not be so construed as to change the operation of the general taxing laws unless such intent is plainly expressed.—Howell v. Cassopolis, 35 M. 471. Further as to village taxes see Boyce v. Peterson, 54 M. 490; Common Council v. Smith, 99 M. 507.

Provision of general tax law making it applicable to villages, etc., cannot be invoked to validate illegal action of village assessor which is governed by charter.—Common Council v. Smith, 99 M. 507.

See Secs. 29-31.

Return of city and village taxes.

SEC. 108. Am. Act 206 of 1897. (3931) The authorities of any city or village, the charter of which does not so provide, may provide by ordinance for the return of all unpaid taxes on real property to the county treasurer in the same manner and with like effect, as returns by township treasurers.

Collection thereof.

The taxes thus returned shall be collected in the same manner as other taxes returned, as provided in this act.

Judicial sale.

The authorities of any city or village which, by its charter, has the right to sell lands for unpaid taxes or assessments, may provide for judicial sale of such lands.

State bids protected.

Such sale shall be made on petition filed in behalf of the city or village in interest, and shall conform, as near as practicable, to the provisions as to sale in this act: *Provided*, That whenever any lands are offered at such sale that have been bid to the State at any tax sale made under the provisions of any general tax law, and upon which such bid or bids remain undischarged, any sale made of such lands at the city tax sale shall be conditioned upon the payment of the tax lien held by the State on said land, and the

sale so made shall be void if the tax lien held by the State shall remain unsatisfied.

Acts of deputies.

SEC. 109. (3932) When an officer is authorized to do any act his deputy shall have the same authority, and such officer shall be responsible for the acts of his deputy.

Deputy Auditor General.—98 C. L. '97. Deputy county treasurer.—2536 C. L. '97. Deputy county clerk.—2572 C. L. '97. Deputy township treasurer, see Sec. 111. Deputy township clerk.—2342 C. L. '97.

Compensation of county and township officers.

SEC 110. (3933) Supervisors shall be allowed for their services in assessing property, making tax rolls, and for extending taxes thereon, at the rate of two dollars for each day actually and necessarily spent in making the same; the members of the board of review shall be paid at the same rate per day for each day actually and necessarily spent in the attendance upon the board; the accounts for such services shall be verified, audited and paid as other township expenses. County officers shall be paid for services under this act by salary or otherwise as the board of supervisors shall determine: *Provided*, That all cities in this State shall be exempted from the provisions of this section, and the common council shall have power to fix and determine the compensation of the city assessor and of his assistants and of the boards of review, boards of estimates, and all other like officers.

Proviso as to certain cities.

County clerk whose salary is fixed at a specified amount is not entitled to additional compensation for services contemplated by act.—Gardner v. Newaygo Co. Supervisors, 110 M. 94. Necessary disbursements in pursuance of his duties are proper charges.—Ibid.
See Sec. 90.

Deputy township treasurer.

SEC. 111. Am. Act 214 of 1897. (3934) Any township treasurer with the consent of his bondsmen, which consent shall be in writing and shall be filed with the clerk of the township, may appoint a deputy who shall possess all the powers and may perform all the duties of the treasurer. Such township treasurer and his bondsmen shall be liable for all the acts and defaults of such deputy treasurer. Such deputy shall be paid by the treasurer.

Tax payments unaccounted for.

SEC. 112. (3935) If at any time it shall be discovered that the treasurer of any township has received the tax assessed upon property which has been returned delinquent, the supervisor shall have power, and he is hereby required to collect the same, in the name of his township, from such treasurer or his sureties, together with interest and charges.

Removal of timber from lands bid to State.

SEC. 113. Am. Act 154 of 1895. (3936) It shall be unlawful for any person to cut or remove any logs, wood or timber from any lands sold and bid in by the State of Michigan, for the non-payment of taxes, while the State remains the owner of such lands or the holder of any tax lien thereon by virtue of such sale, and if any person shall cut, or remove such logs, wood, or timber from such lands during the time aforesaid, the Auditor General or his deputy shall issue a warrant under his hand, in the name of the people of the State of

Warrant of Auditor General for seizure, etc.

Michigan, directed to the sheriff of the county where such lands are situated, giving therein a description of such lands, the amount of such taxes with interest and charges thereon, then remaining unpaid, commanding such sheriff forthwith to seize such logs, wood, or timber, wherever the same may be found in any county in this State, and to sell the same, or a sufficient quantity thereof, to satisfy such taxes, with the interest and charges thereon and the cost of such seizure and sale. The sheriff shall receive such warrant and execute the same as therein directed, as in case of levy and sale on execution, and make return thereof with his doings thereon to the Auditor General, within sixty days after the receipt of the same, and pay over all money collected thereon to the State Treasurer. The Auditor General may furnish the State trespass agent with lists or plats of land bid in by the State and remaining unpaid, and the said trespass agent shall examine such lands and promptly report to the Auditor General all violations of the provisions of this section. The sheriff and county treasurer of each county are hereby directed to report all such trespass, prohibited by this section, to the Auditor General, immediately, whenever they shall have knowledge of the same, and any county or township officer having knowledge of such trespass shall report the facts to the sheriff or county treasurer.

Duties of sheriff.

Return of doings.

Examination of lands by trespass agent.

Report of trespass.

Duty of county and township officers.

Commissioner of State Land Office authorized to adjust trespass.—1323 and 1393 C. L. '97. Prosecuting attorney to report trespass to Commissioner State Land Office.—1398 C. L. '97. Penalty for trespass.—1394; 1396; 11204; 11584; 11587; 11648-9 C. L. '97. Trespass on public lands.—11153, 11749-51 C. L. '97. Removal of buildings, fences, etc., suit for.—9197 C. L. '97. Action for trespass.—11122-32; 11217 (See St. John v. Antrim Iron Co., 6 Det. Leg. News 653); 11153; 9729; 11755 C. L. '97.

Statutory citations above include some which are applicable to lands purchased for taxes as well as those solely applicable to public lands.

Where one acting in good faith intentionally intermingles property of his own with that of another of equal value and quality he does not lose title to the whole, but each party will be given his due proportion of the whole.—Keweenaw Association v. O'Neil, 6 Det. Leg. News 124. As to fraudulent admixture of logs, see Stephenson v. Little, 10 M. 433.

SEC. 114. (3937) No injunction shall issue to stay proceedings for the assessment or collection of taxes under this act.

No injunction to stay collection.

Legislature may proscribe remedy by injunction to restrain collection of taxes where it has provided complete remedy at law to recover taxes illegally assessed or collected.—Eddy v. Township of Lee, 73 M. 123; Canal & Ry. Co. v. Auditor General, 79 M. 351.

SEC. 115. (3938) The holder of any certificate of sale shall, at any time after its issue, have the right to an injunction to restrain waste on any of the lands described in such certificate where such lands are valuable for timber, and the circuit court in chancery of the county in which such lands are situated shall have jurisdiction to grant such relief on bill or petition, where no other relief is sought.

Injunction to restrain waste.

A trespass to land which is of a continuing nature, the constant recurrence of which renders the remedy at law inadequate unless by multiplicity of suits, may be relieved against by injunction.—Davies v. Township of Frankenlust, 118 M. 494; Hall v. Nester, 6 Det. Leg. News 672.

In an action for waste purchaser must prove that the acts complained of were injurious to the freehold.—Ward v. Carp River Iron Co., 47 M. 65. See further as to what constitutes waste.

See Blackwood v. Van Vleit, 11 M. 252.

Willfully erroneous assessment.

Penalty.

Willfully erroneous review.

Penalty.

SEC. 116. (3939) If any supervisor or other assessing officer of any township or city shall willfully assess any property at more or less than what he believes to be its true cash value, he shall be guilty of a misdemeanor, and on conviction thereof he shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars, at the discretion of the court. If any board whose duty it is to review the assessment of an assessing officer shall willfully assess property at more or less than its cash value, the members voting in favor of such action shall severally be guilty of a misdemeanor and on conviction shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, at the discretion of the court.

Failure to record payment.

Penalty.

SEC. 117. (3940) If any officer to whom any tax is paid shall fail to make proper entry and return of such payment, he shall be liable to any person injured, for the full amount of the injury, and if such failure is willful he shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by imprisonment in the county jail not more than six months or by fine not more than three hundred dollars.

See People v. Bringard, 39 M. 22.

Willful false swearing perjury.

SEC. 118. (3941) Any person who, under any of the proceedings required or permitted by this act shall willfully swear falsely, shall be guilty of perjury and subject to its penalties.

Official neglect.

Penalty.

SEC. 119. (3942) Any officer who shall willfully neglect, or refuse to perform any of the duties imposed upon him by this act shall, when no other provision is made herein, be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, in the discretion of the court, and shall be liable to any person injured thereby to the full extent of the injury sustained.

The last clause of this section places a personal liability upon the assessor in the event of any willful neglect or refusal to perform his duties, whenever such neglect or refusal shall occasion loss or injury to any person.

Report of stockholders of banks.

County clerk to notify supervisors.

Willful neglect by bank cashier.

SEC. 120. Am. Act 154 of 1895. (3943) The cashier of every bank, the capital of which is represented by shares of stock, shall, on the second Monday of April in each year, file in the office of the county clerk of the county where the bank is located, a list of the names of the stockholders, the amount of stock held by each on the day said report is made, and their respective residences. Immediately after the filing of such statement the county clerk shall notify the supervisor of each township of the name of each person, if any, residing in his township, holding shares of stock in any such bank, and of the amount thereof as shown by such statement. If the cashier of any bank shall willfully neglect or refuse to make and file in the office of the county clerk, a list of the names of stockholders, the amount of stock held by each, and their respective

residences, as provided in this act, or shall willfully make and file any false entry in any such list, he shall be guilty of a misdemeanor, and upon conviction he shall be punished by fine not exceeding five hundred dollars or by imprisonment in the county jail not to exceed a period of six months, or by both such fine and imprisonment in the discretion of the court. If the president, secretary or chief accounting officer of any corporation, company or association, or any representative thereof, shall willfully neglect or refuse, or shall make and verify any false statement to any assessing officer, the intention or effect of which may be to escape taxation, such person shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail not to exceed a period of six months, or by both such fine and imprisonment in the discretion of the court. And any person who shall willfully make and verify any such statement with the effect or intention to evade taxation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed three hundred dollars, or by imprisonment in the county jail not to exceed a period of six months or by both such fine and imprisonment in the discretion of the court.

Penalty.

Willful misconduct by corporation officer.

Penalty.

Evasion of taxation.

Penalty.

Report of stockholders.—See also 6104 C. L. '97.

SEC. 121. (3944) The Auditor General shall, from time to time, as he may deem necessary, cause to be printed at the expense of the State, a sufficient number of copies of this act, and such other laws in force relating to the taxation of property, as may be requisite to a full understanding of all the duties of assessing officer, or other State, county or township officers, with proper side notes, index and forms of proceedings, as may be necessary and proper; to furnish one copy to each supervisor, assessor, township clerk and county clerk, and three copies to each county treasurer. Each copy shall be marked "State property." He shall transmit to each county treasurer, at the expense of the county, a sufficient number of copies for each county, and every county treasurer shall immediately furnish to the township clerk of each township five copies, to be distributed by him to the officers entitled thereto. The Board of State Auditors shall examine and audit all properly certified claims for services rendered and expenses incurred under the provisions of sections 121, 127 and 128 of this act.

Auditor General to publish tax laws.

Distribution.

Board of State Auditors to audit certain claims.

Auditor General to draw up and cause to be published instructions for the government of officers concerned in the collection of the revenue; which shall be binding upon such officers.—95 C. L. '97; and shall publish and distribute all pamphlets of the general tax law or of all laws relating to the revenues of the state as may be required.—Sec. 2, Act 44 of 1899.

SEC. 122. (3945) It shall be the duty of the Auditor General to provide and furnish in due season to the several county clerks and treasurers, at the expense of the State, all forms, blanks and record books made necessary by this act.

Blanks, etc., furnished by Auditor General.

Return of taxes of 1891 and 1892 to Auditor General.

SEC. 123. (3946) In order to perfect the records of taxes in the office of the Auditor General, and for the other purposes of this act, it shall be the duty of each county treasurer, immediately after the passage of this act, to make a full and complete transcript and return of all lands returned as delinquent for taxes for the years one thousand eight hundred and ninety-one and one thousand eight hundred and ninety-two, not already made, and a full and complete transcript of all moneys received, sales made and recorded, and all other things had or done under the provisions of act number two hundred of the public acts of eighteen hundred and ninety-one, entitled "An act to provide for the assessment of property and the levy of taxes thereon and for the collection of taxes heretofore and hereafter levied, and to repeal act number one hundred and ninety-five of the session laws of one thousand eight hundred and eighty-nine, except as provided in this act, and all other acts and parts of acts in anywise contravening any of the provisions of this act," approved July seventh, eighteen hundred and ninety-one. Upon the receipt of such transcripts and lists, the Auditor General shall cause them to be recorded in his office, in the proper books therefor, as such delinquent tax lands were by law or custom recorded prior to the passage of such act above mentioned. The Auditor General shall require of each of the county treasurers of this State, and such county treasurers are hereby directed to furnish on demand copies of all records, decrees, certificates, redemptions, sales, minutes and information to enable the Auditor General to perfect such tax records in his office. A like demand may be made on each of the county clerks in this State and shall in like manner be complied with by each of such clerks. Each county treasurer and county clerk shall receive such reasonable compensation for the extra services required by this section as may be allowed by the board of supervisors, to be paid out of the county treasury.

Return of doings of county treasurers.

Record of returns.

Copies of records, etc.

Duties of county clerks.

Supervisors to compensate treasurer and clerk.

Duties of Auditor General.

SEC. 124. Am. Act 154 of 1895. (3947) From and after the passage of this act the Auditor General shall perform all the duties in relation to taxes levied, assessed, collected and returned delinquent, sold or to be sold as required by this act: *Provided*, It shall not be necessary for him to sell or order resold, advertise or readvertise, and revise or renew any act done by any officer or court under and by virtue of the said act heretofore mentioned in the preceding section, but all such proceedings and acts shall be recognized and held to be legal and valid under this act, subject, however, to the provisions of section 98 of this act. In all cases where deeds have been issued by county treasurers, any such deeds shall be valid and of such force and effect as if issued by the Auditor General, but the Auditor General may cancel any deed so made by any county treasurer, on the request of the holder thereof, and issue a new deed signed by the Auditor General or his deputy as in this act provided. And for all lands advertised and sold by any county treasurer under the authority granted in said act before men-

Not required to revise acts done under 1891 law.

County treasurer's deeds valid.

Cancellation and reissue of deeds.

Sale under 1891 law valid.

tioned, such advertisement and sale shall be held legal and valid, but all such proceedings and all proceedings necessary to be had hereafter in relation to such lands and taxes shall be had under the provisions of this act. All future proceedings to be under this act.

The action of the head of an executive department of the State is not judicial and therefore not subject to direct proceedings for review.—Ambler v. Auditor General, 38 M. 746.

Section validates deed executed by county treasurer under Act 200 of 1891 for lands assessed under law 1889, the title to which was in the State at the time of sale by county treasurer.—Hoffman v. Pack Woods Co., 6 Det. Leg. News. 964.

SEC. 125. (3948) All rights which may have accrued to any person, as well as all rights which have accrued or become vested in any individual, corporation, municipality, or the State, under any of the heretofore existing tax laws of the State which have been amended, modified, changed or repealed, shall not be affected, changed or destroyed, but the same shall remain in force, subject to review and enforcement in the courts of this State, and for the completion of all proceedings heretofore begun for the collection of taxes or the enforcement of all the requirements of such laws. Vested rights undisturbed.

SEC. 126. That act number two hundred of the public acts of eighteen hundred and ninety-one, entitled "An act to provide for the assessment of property and the levy of taxes thereon, and for the collection of taxes heretofore and hereafter levied, and to repeal act number one hundred and ninety-five of the session laws of one thousand eight hundred and eighty-nine, except as provided in this act, and all other acts and parts of acts in anywise contravening any of the provisions of this act," approved July seventh, eighteen hundred and ninety-one, and all other acts and parts of acts in anywise contravening any of the provisions of this act, be and the same is hereby repealed: *Provided*, That such repeal shall not destroy or affect any rights which may have accrued or may hereafter accrue under such acts or parts of acts while the same were in force. Act 200, Public Acts of 1891, repealed. Contravening acts repealed. Proviso.

See Blackwood v. Van Vleit, 30 M. 118.

INSPECTION AND DISPOSITION OF STATE TAX LANDS.

SEC. 127. Am. Act 154 of 1895. Am. Act 107 of 1899. (3949) Lands delinquent for taxes for any five years, where said lands have been sold and bid off to the State for the taxes of one or more of the said years, and then so held, and no application having been made to pay, purchase or redeem the said lands for said taxes and no action pending to set aside such taxes or to remove the cloud occasioned thereby, shall, within the meaning of this act, be deemed abandoned lands, unless such lands are actually occupied by the person having the record title thereto. Any lands delinquent for taxes for a period of five or more years, and said lands having been sold and bid in by the State and held by the State for the taxes of any of said years, and no application having been made to pay, redeem or purchase the same, and no suit pending to set Certain State tax lands deemed abandoned.

aside said taxes or remove the cloud from the title occasioned thereby, shall be subject to the provisions of this section.

Title of State to such lands absolute.

Whenever it shall appear by the records in the Auditor General's office that any lands are delinquent for taxes for five years or more and that said lands have been bid off to the State one or more times by reason of such delinquent taxes, and that the time of redemption of such sale or sales has expired and that no application has been made to pay, to redeem or purchase the same, and it shall appear that no action is pending in the circuit court of the county where said lands are situated to set aside the taxes or remove the cloud on the title occasioned thereby, the title to the State shall be deemed absolute in and to said lands; and it shall be the duty of the Auditor General and the Commissioner of the State Land Office to cause an examination of such lands to be made as soon as practicable, to ascertain their value and if abandoned. Upon the examiner filing a certificate as to said examination and the occupancy of said premises, and the certificate of the county clerk of the county where said lands are situated, in the office of the Auditor General, showing that no suit is pending in said county to set aside any of said taxes or remove the cloud occasioned thereby, the Auditor General and the Commissioner of the State Land Office shall determine what lands so examined come within the provisions of this section, and record their determination in a book to be kept in the office of the Auditor General for that purpose. The finding and determination of the Auditor General and the Commissioner of the State Land Office shall show:

Examination of lands.

Examiner's and county clerk's certificate.

Determination by Auditor General and Commissioner of State Land Office.

First, A description of said lands;

Second, The years for which they have been returned delinquent for taxes;

Third, The time or times bid off to the State, and the taxes for which said bid was made;

Fourth, Whether said lands are occupied or abandoned;

Fifth, Whether or not any suit is pending in the county where said lands are situated to set aside the taxes, or any of them, or to remove the cloud occasioned thereby.

Limitation of contest.

The determination of the Auditor General and Commissioner of the State Land Office in that regard shall be deemed to be conclusive as to the facts therein stated, unless suit is instituted to vacate the same within six months, as hereinafter provided. Within ninety days after such determination the Auditor General shall make a transfer by deed of all lands so determined by the Auditor General and said Commissioner of the State Land Office to come within the provisions of this section to the State of Michigan as to an individual, as provided in section seventy-two of this act so far as said section is applicable. Said deed or deeds shall be delivered to the Commissioner of the State Land Office, who, after having said deed or deeds recorded in the register of deeds office, of the county where the lands are situated, shall file the same in his office. Upon the execution and delivery of said deed or deeds to the

Auditor General's deed to State.

Recording and filing.

Commissioner of the State Land Office, said commissioner shall hold said lands as State lands, subject to the provisions hereinafter contained. And no suit shall be instituted to vacate, set aside or annul the said determination of the said Auditor General and the Commissioner of the State Land Office made as aforesaid unless instituted within six months after the determination aforesaid. Any person desiring to file a bill or institute a suit to vacate the findings of the Auditor General and Commissioner of the State Land Office, as provided in this section, shall first pay to the Auditor General all delinquent taxes returned to the Auditor General on the lands in question, together with all interest, costs and charges, and shall purchase and pay for all bids and titles held by the State to such lands by paying therefor the amount bid by the State and all interest and legal charges thereon, as provided in section eighty-four of this act. The money so received by the Auditor General shall be paid into the general fund of the State, and in case the determination of the Auditor General and Commissioner of the State Land Office should be set aside and held for naught, and the taxes, or any portion thereof, shall be adjudged invalid for any of the reasons set forth in section seventy-six of this act, then in such case the Auditor General shall return to the person entitled thereto such taxes, or any portion thereof, as shall be so adjudged invalid for the reasons aforesaid, and in case the title is held valid the money so received shall be divided between the State, county and township pro rata according to the taxes paid, the same as in other cases. Any suit instituted for the purpose of setting aside the determination aforesaid may be commenced in the circuit court of the county of Ingham. It is hereby made the duty of the county clerks of the several counties of this State, on inquiries by the Auditor General, to furnish to said Auditor General a certificate showing whether or not any such suit is pending in the circuit court of the counties, as above referred to, relating to any lands described and referred to in the inquiry of the Auditor General.

Suit to vacate.

Payment of taxes condition precedent.

Disposition of money paid.

Suit in Ingham county.

Duty of county clerks.

Lands held for the last three consecutive sales under tax law of '89, subject to provisions of this section if also bid to the State at sale of December, 1893, under this act.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444. See also Attorney General's opinion, 5 Det. Leg. News No. 16.

To constitute a continued possession it is only necessary that it should have been such as the owner of that kind of real estate (remote pine lands) ordinarily exercises.—Safford v. Basto, 4 M. 406.

SEC. 128. Am. Act 107 of 1899. (3950) The register of deeds for each county, upon delivery to him for that purpose of the deeds mentioned in the preceding section, shall record the same in his office and return such deeds to the Commissioner of the State Land Office. The register of deeds for recording such deeds shall receive the sum of fifty cents each from the State Treasurer out of any funds not otherwise appropriated, upon allowance of his account by the Board of State Auditors.

Record of State tax deeds to State.

Duty and fees of register.

See 11237 C. L. '97.

Record in State Land Office.

SEC. 129. (3951) The Commissioner of the State Land Office shall make a list or entry in books in his office of such lands, separate from other State lands, showing the amount of taxes due and the years for which such lands were delinquent for taxes, the date of inspection and by whom inspected, and when deeded to the State; also when, to whom, and upon what conditions sold or disposed of, as hereinafter provided.

Cancellation of certain taxes.

SEC. 130. (3952) Am. Act 107 of 1899. All taxes charged against such lands in the office of the Auditor General at the time they are deeded to the State shall be canceled, but no part of such taxes due to the township or county shall be charged to the State, but the State, county and township respectively shall bear the share of loss on such taxes that properly belongs to each, and the Auditor General shall make a list of all such lands in each county on or before the first day of March in each year and transmit such list to the county treasurer and the county treasurer shall serve, or cause to be served, upon the supervisor of the township in which such lands are located a copy of the list of lands in such township as furnished to said treasurer by the Auditor General. Said supervisor shall produce said list to the board of review while in session for the purpose of reviewing the assessment roll. The supervisor shall omit and cancel from his assessment roll all said lands so deeded to the State, as shown by said list, and it shall also be the duty of the board of review, when in session, to compare the assessment roll of the township with the list so furnished by the county treasurer, as aforesaid, and correct all mistakes, and said lands so deeded as aforesaid shall not be liable to any assessment for any purpose until the same are again sold and deeded by the State, and notice of said sale and deeding given to the county treasurer by the Commissioner of the State Land Office, as hereinafter provided.

Notification of county treasurers by Auditor General.

County treasurer to notify supervisor.

Lands deeded state to be omitted from assessment roll.

Such land not taxable until sold.

Lands subject to homestead entry.

SEC. 131. Am. Act 240 of 1897. (3953) Am. Act 107 of 1899. All such lands shall be held by the Commissioner of the State Land Office subject to entry as homestead lands only, and if any person shall apply for them, or any part thereof, not to exceed in quantity one hundred and sixty acres or if within the limits of the plat of any city or village, not to exceed the contiguous lands in any one block, or two contiguous parcels of unplatted land, for any one person so applying, and shall file an affidavit that such person desires such lands for actual settlement, for the purpose of a homestead, the Commissioner of the State Land Office shall issue a certificate to such person for such land upon the payment of the sum of ten cents per acre, conditioned that such persons shall reside upon said lands for the period of five years and improve the same: *Provided*, That in case such lands are included in the plat of any city or village or of any subdivision of or addition to any city or village, the land that may be taken as a homestead by any person shall be contiguous and shall not exceed one block according to such plat, or two contiguous unplatted parcels, except where such city or village lands have been bid to the State by govern-

Limit.

Conditions.

Platted lands.

ment description, in which case no person shall receive a certificate for more than one government description, and in the case of any such lands the amount paid therefor shall be the same for any parcel less than one acre as for one acre as provided in this section. At the expiration of such five years such person shall be entitled to make, and shall make, proof of the fulfillment of such contract within three months in such manner as the said Commissioner of the State Land Office may prescribe. And when such proof is made to the satisfaction of said Commissioner of the State Land Office such person shall be entitled to a deed of such land from the State, executed by the Commissioner of the State Land Office, on behalf of the State, which deed shall be in such form as the Commissioner of the State Land Office shall determine, the said deed shall be witnessed and acknowledged, and shall be entitled to record in the office of the register of deeds in the proper county, in the same manner and with like effect as other deeds are duly witnessed, acknowledged and certified. Such deeds shall convey an absolute title to the lands sold, and shall be conclusive evidence of title in fee in the grantee, and it shall be the duty of the State of Michigan to defend and prosecute all suits brought to protect such title and the State shall pay all costs adjudged against the homesteader. Such homestead lands shall be subject to the same rules and regulations now in force as to other homestead lands not inconsistent with the provisions of this act. Persons who have heretofore taken up homestead lands under this section, having made the first payment required by this section, and having resided upon and improved the same since they entered thereupon, are hereby relieved from making any further payments to the State: *Provided*, That nothing in this section shall be construed to entitle any person or persons who have heretofore entered such lands the return of any part of the payments heretofore made by them: *And provided further*, That any person who has purchased and entered into possession of any lands as a homestead, under and by virtue of the provisions of this section, as originally passed, or as amended when said lands had been bid off to the State and were held by the State for the taxes of one or more years, and said lands were delinquent for taxes for three or more years, shall, on performing the other conditions of said section, as amended, receive a deed therefor, as herein provided, and shall be deemed to have a good, sufficient fee-simple title to said premises, to all intents and purposes the same as though said lands had been bid off to the State for a consecutive period of more than three years, as originally provided in section one hundred and twenty-seven of said act. And in all cases where the lands have been taken as a homestead as set forth in last foregoing proviso, all actions of ejectment or to recover possession of said lands or to set aside the title of such homesteader by any person, firm or corporation claiming the original or government title shall be commenced within six months after this act shall take effect and not after-

Homesteader's proofs.

Deed from State.

Entitled to record.

Evidence of title.

State to defend.

Rules of entry.

Former homestead entries.

Deed to.

Title.

Limitation of actions.

Payment of taxes condition precedent.

wards. Said person, firm or corporation shall before commencing such proceedings pay to the Auditor General all delinquent taxes returned to the Auditor General on the lands in question, together with all interest, costs and charges, and shall purchase and pay for all bids and titles held by the State to such lands by paying therefor the amount bid by the State and all interest and legal charges thereon, as provided in section eighty-four of this act. The money so received by the Auditor General shall be deposited in the State Treasury to the credit of the State, county and township wherein said lands are situated in proportion to the amount of taxes due to the State, county and township upon said lands; and in case the State's title to the land should be declared valid, then the taxes and moneys so paid by the person, firm or corporation instituting such suit of ejectment shall be returned upon the order of the Auditor General, less the costs of such suit. And it shall be the duty of the State of Michigan to prosecute and defend suits and pay costs as herein provided: *And provided further*, That after the said land has been so held by the State of Michigan subject to entry as homestead land, for three years from April one, eighteen hundred ninety-nine, for all land already deeded to the State and for three years or more from the date of the deed for all land hereafter deeded to the State under section one hundred twenty-seven aforesaid and where no application has been to homestead certain descriptions of said lands, then and in such case said lands concerning which there has been no application to homestead shall be open to sale and purchase as hereinafter provided. In case written application shall be made to the Commissioner of the State Land Office to purchase any description of said lands so held by the State for more than three years, as herein stated, it shall then be the duty of the Commissioner of the State Land Office to examine and appraise the value of the land so offered to be purchased as aforesaid. The Commissioner of the State Land Office shall make a record of said appraisement in a book to be kept in his office for that purpose. After such examination and appraisement, if there has been no application to homestead said lands it shall be competent and the Commissioner of the State Land Office is hereby authorized to sell such description of land to any person so applying for the purchase thereof, but at not less than the appraised valuation and he shall not be authorized to sell to any one person over two hundred and forty acres of said land. In case of the sale of said lands the Commissioner of the State Land Office shall execute and deliver to the purchaser a deed in such form as he may determine, which shall convey to the purchaser the same interest as is provided for a deed where said lands have been homesteaded as provided in this section. All moneys received by the Commissioner of the State Land Office upon the sale of said lands as provided under the last above proviso shall by him be deposited in the State Treasury to the credit of the State, county and township wherein said lands are situated in proportion to the amount of taxes

Disposition of money.

State to defend.

Appraisal and sale after three years.

Duty of Commissioner of State Land Office.

Record of appraisement.

Deed on sale.

Disposition of purchase money.

due to the State, county and township upon the land so sold by the Commissioner of the State Land Office at the time of the conveyance to the State of such lands.

Improvements on any such lands held under certificate are assessable as personal property. See Sec. 132. For manner of assessment see Sec. 4. A homestead entry vests no title, but gives a right of possession which may be perfected by continued occupancy and improvement, and if not so perfected reverts to the government. When perfected, title issued relates back to the time when entry was made.—F. & P. M. R. R. Co. v. Gordon, 41 M. 420. The retention of homestead rights, though the party live elsewhere temporarily, is largely a matter of continuing intent, and is a fact to be proved like any other fact.—Hoffman v. Buschman, 95 M. 538. The duration of a man's absence from his own house does not of itself supply a conclusive presumption that he has abandoned it as a homestead.—Bunker v. Paquette, 37 M. 79.

But a homesteader holding a tax homestead certificate would forfeit his rights to the land by wholly removing himself and his family therefrom and only holding possession of the lands by hiring another party to live upon and improve the land.—Opinion of Attorney General Oren. Det. Leg. News, March 24, 1900.

Homesteaders are protected by provisions of Sections 73 and 104.—Conn. M. L. Ins. Co. v. Wood, 115 M. 444.

Improvements assessable.

SEC. 132. (3954) Lands held under such contract shall not be assessed until the State has given title to the occupant thereof, but improvements upon any such lands may be assessed as personal property, as in the case of other part paid lands.

Notice of perfecting of title.

SEC. 133. (3955) Am. Act 107 of 1899. Whenever any person has perfected his title to any such lands, and a deed for the same has been issued by the State to such person, the Commissioner of the State Land Office shall so notify the county treasurer of the proper county that such lands are again and thereafter taxable as other lands. And they shall thereafter be assessed to such owner or occupant as other lands are assessed for all purposes. The county treasurer shall serve, or cause to be served, upon the supervisor of each township in which such lands are located, on or before the fifteenth of April, a copy of the list of lands in his township, so furnished to said county treasurer by the Commissioner of the State Land Office. Said supervisor shall produce said list to the board of review, while in session, for the purpose of reviewing the assessment roll, and all such lands shall be placed upon the assessment roll. All acts and parts of acts in anywise contravening any of the provisions of this act are hereby repealed.

When assessable.

Notice to supervisor.

Proceeds.

SEC. 134. (3956) All moneys received by said commissioner for such lands shall be turned over to the State Treasurer and placed to the credit of the general fund, and all expenses incurred shall be audited by the Board of State Auditors and paid out of the general fund.

Expenses.

SUPPLEMENTARY.

Recording and filing plats, deeds, etc.

SEC. 135. Am. Act 154 of 1895. (3957) When any deed, land contract, plat of any town site, village or addition to any town site, village plat or city, or any other instrument for the conveyance of title to any real estate, is presented to the register of deeds of any county in this State for record or filing in his office, he shall require from the person presenting the same a certificate from the Auditor General, or from the county treasurer of the county, whether there are any tax liens or

Register to require certificate of payment of taxes, etc.

titles held by the State, or by any individual, against such piece or description of land sought to be conveyed by such instrument, and that all taxes due thereon have been paid for the five years preceding to the date of such instrument, and in default of the presentation of such certificate he shall not record the same until such certificate is secured and presented. The register of deeds shall note the fact upon said deed that said certificate has or has not been presented to him when such instrument is presented for record, and in case the person presenting such instrument shall refuse to procure such certificate, he shall endorse that fact upon said instrument, over his official signature, and shall refuse to receive and record the same: *Provided*, That the provisions of this section shall not apply to the filing of any town or village plat for the purpose of incorporation, in so far as the land therein embraced is included in a plat already filed in the office of the register of deeds, or in so far as the description of lands therein is not changed by such plat, nor to the filing of any copy of the town, village or city plat in case the original plat filed in the office of such register of deeds has been lost or destroyed, nor to any sheriff's or commissioner's deed executed for the sale of lands under any proceeding in law, or by virtue of any decree of any of the courts of this State, nor to any deed of trust by any assignee, executor or corporation executed pursuant to any law of this State, nor to any quit claim deed or other conveyance containing no covenants of warranty; nor to any land patent executed by the President of the United States, or the Governor of this State, nor to any tax deed made by the Auditor General; nor to any deed executed by any railroad company conveying its right of way, provided such deed is accompanied by a certificate of the Auditor General showing that all specific taxes due from said railroad company have been paid, to and including the year in which such deed is executed. A violation of the provisions of this section by any register of deeds shall be deemed a misdemeanor, and upon conviction thereof he shall be fined not to exceed one hundred dollars, and he shall further be liable to the grantee of any instrument so recorded for the amount of damages sustained, to be recovered in an action for debt in any court of this State.

Noting certificate.

When register shall refuse to record.

Proviso.

Exceptions.

Penalty.

The evident purpose is to secure collection of taxes and the section is not void under Sec. 20. Art. IV, Constitution.—Van Husan v. Heames, 96 M. 504. Provisions of section not an infringement of property rights.—Id.

"That all taxes due thereon for the five years, etc.," refers to taxes appearing upon the records of the Auditor General or county treasurer and the certificate must be made from the facts shown by those records. The instrument is entitled to record unless the certificate shows that all taxes have not been paid for the five years previous to its date; and sale to individuals is payment of the taxes for which the land was sold. The certificate need not specify the unpaid taxes nor the outstanding tax liens or titles, but only whether there are or are not any of each.—Van Husan v. Heames, 96 M. 504.

Fee of county treasurer for certificate, 15 cents; in Wayne county, 25 cents. —2548 C. L. '97, Am. by Act 211 of 1899. The charge made by the Auditor General for certificate is fifty cents where the instrument does not contain more than two or three descriptions, but is governed by the provisions of Sec. 166 C. L. '97, and consequently where the instrument contains a large number of descriptions an additional charge is made.

The record of an instrument not by law entitled to record is notice to no one.—Dutton v. Ives, 5 M. 515; Galpin v. Abbott, 6 M. 17.

Blanks for county treasurers' certificates under this section are furnished

y the Auditor General. It is frequently made evident that unapproved orms are used in some counties, in certain instances the certificate show- ng no more than that the taxes for the five years preceding the date of he instrument to be recorded have been paid. Such a certificate is not a ompliance with the law and is frequently misleading. Sale for taxes to an ndividual is a payment of the tax, but this legal conclusion not being opularly understood, a certificate showing no more than that the taxes re paid is understood by many as showing that the land has not been old for taxes and often leads owners to neglect redemption, and conse- uently to a loss of their titles. The certificate should contain a description f the lands, should show whether or not "there are any tax liens or titles eld by the State," should state affirmatively or negatively whether "there re any tax liens or titles held by any individual," and whether the taxes or the five years preceding the date of the instrument, are paid. If the axes for the prescribed period are shown to be paid, the instrument is ntitled to record, although there may be any number of tax titles held y individuals or by the State, provided none of the latter are for taxes f either of the five years preceding the date of the deed (not of the certif- cate). If asked for, and the statutory fee paid, the certificate should be ssued, whether it shows the instrument to be recordable or not.

A tax history cannot be substituted for this certificate, nor should the ertificate recite what liens or taxes there may be against the land, such howing being provided for by the statutes providing for making tax his- tories and for the fees therefor.

SEC. 136. [Provided for the purchase of lands held as State tax lands five years prior to 1890. The section expired by its own limitation January 1, 894.]

Writs of assistance.

SEC. 137. (3958) The circuit court may, on application, put the purchaser of any lands sold under the provisions of this act in possession of the premises by writs of assistance.

A demand for the possession of land made upon the agents of a corporation who are in the actual occupancy thereof is a sufficient foundation for an application for a writ of assistance against the corporation.—Ball v. Ridge Copper Co., 118 M. 7. Further as to writ of assistance see Sec. 70, 72, and Berkey v. Burchard, 5 Det. Leg. News. 723.

Lands returned under prior tax laws.

SEC. 138. Added by Act 169 of 1899. All lands which have been returned to the Auditor General as delinquent for taxes under the provisions of any general tax law in force prior to the passage of act two hundred of the public acts of eighteen hundred and ninety-one, and upon which the taxes are now or shall hereafter remain unpaid and which have not been sold for such taxes, and all lands so returned which have been heretofore sold for such delinquent taxes, and upon which the sale or sales so made shall have been or may hereafter be set aside by any court of competent jurisdiction, or shall have been or may hereafter be canceled, as provided by law, shall be subject to disposition, sale and redemption for the enforcement and collection of such tax liens in the method and manner provided in this act for the disposition, sale and redemption of lands made subject to the provisions of this act by section sixty thereof: *Provided*, That nothing in this section contained shall be held to provide for the sale of any lands heretofore sold, if the sale thereof shall have been set aside or canceled for any reason affecting the validity of the taxes for which the land was sold: *Provided further*, That the court may in its discretion, where equity appears to so demand, enter decree of sale for the taxes for any year prior to eighteen hundred ninety-one, for the amount of the taxes found valid, without including the charge for interest thereon as provided by law: *And provided further*, That if tender of the amount assessed against any land for taxes of eighteen hundred ninety, or any prior year is made to the Auditor General, together with the collection fee

Subject to sale under this act.

No sale for invalid taxes.

Court may decree sale for certain taxes without interest.

Payment of taxes of 1890 and prior years.

and the charge for expenses as provided by law, at any time before the first day of the month preceding the month in which sale is ordered to be made, he shall issue receipt therefor, and cancel any State bid under which said land is held for said year, and in such case the State, county and township shall bear the loss of accrued interest in proportion to their several interests therein.

Payment under this section cannot for any purpose be deemed to be a payment as a condition of purchase, but is a voluntary payment, and can only be made to Auditor General.
See Auditor General v. O'Connor, 83 M. 464.

Cancellation of State bids and resale of lands held under invalid sales.

SEC. 139. Added by Act 169 of 1899. The Auditor General may cause an examination to be made of the proceedings under which any lands bid to the State, and which have not been deeded by the Auditor General, were sold for delinquent taxes and bid to the State under the provisions of any general tax law, and if he shall find that such sales or the decrees under and by virtue of which such sales were made were in contravention of any provision of the laws in force at the time such decrees were entered or sales made, he may cancel such sales and proceed at any time to enforce the collection of such taxes under and in accordance with the provisions of this act, as in the case of lands returned or sold thereunder.

On application to Auditor General and payment of the taxes and charges any person owning an interest in land held as State tax land may have any invalid sale canceled and receipt for the taxes issued.
SALES UNDER LAW OF 1885: Law prospective only and sale under it for taxes assessed under law 1882 is absolutely void.—Hall v. Perry, 72 M. 202; McNaughton v. Marin, 72 M. 276.
Interest on taxes assessed under drain law 1885.—Tile Co. v. Snyder, 93 M. 325; Bump v. Jepson, 106 M. 641.
SALES UNDER LAW 1889: As to service of subpeona, see Coyle v. O'Connor, 6 Det. Leg. News 583.
SALES UNDER LAWS OF 1889 AND 1893: Land bid to state and so held cannot be included in subsequent proceedings for sale.—Connecticut Mutual Life Insurance Co. v. Wood, 115 M. 444 (applicable to sale 1890 to 1898, inclusive). But tax deed cannot be attacked in collateral proceedings on this ground.—Peninsular Savings Bank v. Ward, 118 M. 87. The provision under which the decision in Conn. M. L. Ins. Co. v. Wood was rendered was eliminated by the amendment of Sec. 61 in 1899.
Decree will be set aside and deed issued thereunder vacated where court failed to sit for the first five days after the day fixed for hearing (by Sec. 56, Law 1889, and Sec. 66, Law 1893, before amendment of 1899).—Youngs v. Clark, 6 Det. Leg. News 265. Where fifth day falls on Sunday decree cannot be entered until the following Monday.—McGinley v. Calumet and Hecla Mining Co., 6 Det. Leg. News 282; Hall & Munson Co. v. Auditor General, Ibid.
Decree entered in less than five days from date fixed for hearing is void as to those who did not appear or otherwise waive right to apply for further time.—Wait v. McMillan, 6 Det. Leg. News 293.
Where (under Sec. 66 before amendment of 1899) day fixed for hearing was September 24 and judge was not present on that day, but sent order to adjourn to September 30th and it was done and court was in session on the 30th and then adjourned to October 4, when decree was entered; Held, that court did not acquire jurisdiction to enter decree, owner being entitled to five court days (not necessarily consecutive) in which he can make it appear to the court that he has been prevented from filing objections.—Miller v. Brown, 6 Det. Leg. News 659.
Sec. 66 (before amendment 1899) does not require the court to be actually in session, and when the court was adjourned from day to day for the purpose of allowing protest to be filed and the decree was not signed until after the fifth day, no objection could be raised.—Gates v. Johnson, 6 Det. Leg. News 615.
Where the time fixed for the hearing of the petition was November 10 and the court was in session continuously from that day to November 14, inclusive, and then adjourned until Monday the 16th, when the decree was made and entered, it is held that this is sufficient under Sec. 66, Law of 1893 (before amendment of 1899).—Brown v. Houghton Mineral Land and Mining Co., 6 Det. Leg. News 987.
Omission of dollar mark in Tax Record.—Millard v. Truax, 99 M. 157.

SALES UNDER LAW 1893: Purchaser under Sec. 84 (before amendment in 1899) must pay all taxes that are a lien on the land (whether returned or not), and this amount he is bound to know, and must produce evidence that they are paid if such be the fact.—Hughes v. Jordan, 118 M. 27; Cockburn v. Auditor General, 6 Det. Leg. News 316.

When certain applicants to purchase State tax lands had not paid township taxes then due, but made showing said taxes had been paid, and it appearing that such payment was by checks and made by subsequent applicant prior to his application to purchase, but that at the date of the application of the prior applicants said checks had not been paid, but that they were paid before the subsequent applicant's application was made to purchase; Held, that the subsequent applicant was entitled to deed.—Moore v. Auditor General, 6 Det. Leg. News 872.

Notice by purchaser to certain parties.

SEC. 140. Added by Act 229 of 1897. (3959) Am. Act 204 of 1899. No writ of assistance or other process for the possession of any land, the title to which has been obtained under and in pursuance of any tax sale made after the twenty-ninth day of August, A. D. eighteen hundred ninety-seven, or of any sale of State tax lands or State bids made after the said twenty-ninth day of August, eighteen hundred ninety-seven, except where such title shall be obtained under the provisions of section one hundred thirty-one of this act, shall be issued until six months after there shall have been filed with the county clerk of the county where the land is situated a return by the sheriff of said county, showing that he has made personal service, or until substituted service, as hereinafter provided, has been made upon the grantee or grantees under the last recorded deed in the regular chain of title to said land, and upon the mortgagee or mortgagees named in all undischarged recorded mortgages, or any assignee thereof of record, of a notice, which shall be in the following form:

Form.

To the owner or owners of the land herein described, and to the mortgagee or mortgagees named in all undischarged recorded mortgages against said land, or any assignee thereof of record:

Take notice that sale has been lawfully made of the following described land for unpaid taxes thereon, and that the undersigned has title thereto under tax deed issued therefor, and that you are entitled to a reconveyance thereof, at any time within six months after service upon you of this notice, upon payment to the undersigned of all sums paid upon such purchase, together with one hundred per cent additional thereto, and the fees of the sheriff for the service or cost of publication of this notice, to be computed as upon personal service of a declaration as commencement of suit, and the further sum of five dollars for each description, without other additional costs or charges. If payment as aforesaid is not made, the undersigned will institute proceedings for possession of the land.

Descriptions.....Amount paid.....

Tax for 1....

(Signed.) .....

Place of business.....

Notice to non-residents of county.

Provided, That if grantee or grantees, or the person or persons holding the interest in said lands as aforesaid, shall be residents of any county in the State other than the county in which the land is situated, then such return as to such persons

shall be made by the sheriff of the county where such person or persons reside: *Provided further*, If any grantee or grantees, or the person or persons holding the interest in said lands as aforesaid, shall be non-residents of this State, if from the said record aforesaid, or from inquiry, the sheriff can obtain the postoffice address of such grantee or grantees, or the person or persons holding the interest in such land as aforesaid, or if the said address be known to him, he shall send to such person or persons aforesaid a copy of said notice by registered letter, and return the receipt as [or] receipts received for said letter or letters with his return to the county clerk's office:

Notice to non-residents of State.

...ded further. That if any person entitled to notice, as hereinbefore provided, is dead, or if his estate shall be under control of a trustee or guardian, then and in such case notice as hereinbefore provided may be served upon the executor or administrator of said deceased person, or upon his heirs, if there be no executor or administrator, or upon the trustee or guardian of any incompetent person, with like effect as if served upon the grantee, mortgagee or assignee.

...of incompetents and deceased owner.

Provided further, That if the sheriff of the county where any such lands are located shall make a return that after careful inquiry he is unable to ascertain the whereabouts or the post-office address of the grantee named in the last recorded deed, or the mortgagee named in the last recorded mortgage, or the assignee of record of said mortgage of said premises, or of the heirs of said grantee or mortgagee or assignee, or the whereabouts or the postoffice address of the executor, administrator, trustee or guardian of such grantee, mortgagee or assignee, then such notice as is herein provided for shall be published six successive weeks in some newspaper published and circulating in the county where such lands are located, and due proof of publication, by affidavit of the printer or publisher of such newspaper, shall be filed with the county clerk, and shall be in lieu of the personal service above provided for.

Notice by publication.

Recital of consideration in deed not conclusive as to the amount.—Mowrey v. Vandling, 9 M. 39. Recital of consideration in deed is merely to give it effect as conveyance; and for any other purpose parol evidence is admissible to show that it was actually more or less than the amount stated.—Strohauer v. Voltz, 42 M. 444; Doty v. Martin, 32 M. 462. And that it embraces other matters than those stated in the deed.—Dean v. Adams, 44 M. 117; Trevidick v. Mumford, 31 M. 467. See also 9512 and 9519 C. L. '97. The true consideration of a deed may always be shown where it becomes material to do so.—Flynn v. Flynn, 68 M. 20. Consideration of deed may be shown by parol.—Collar v. Collar, 75 M. 414.

The consideration for re-conveyance is double the entire amount paid to purchase the land, which amount includes taxes paid for other years than those included in the deed if such additional taxes were paid as a condition of purchase. Notice in other cases than those definitely provided for in the section is nowhere provided for.—Attorney General's opinion, 5 Det. Leg. News No. 18.

Provisions of Sec. 140 et seq., not applicable to tax sales made prior to August 29, 1897.—Pierpont v. Osmun, 118 M. 472

Plaintiff in ejectment claiming under a tax title acquired (if at all) after Act 229 of 1897 took effect, held not entitled to maintain the action, not having served notice on the owners as provided in that act.—Church v. Smith, 6 Det. Leg. News 353.

SUBSTITUTED SERVICE: The statute must be strictly complied with. If substituted service is resorted to it must appear that adequate endeavor has been made to make actual service.—Merrill v. Montgomery, 25 M. 72. Must be confined to the cases and exercised as provided by the statute.—Hartford Fire Insurance Co. v. Owen, 30 M. 441. See also Campau v. Charbeneau, 104 M. 422.

SEC. 141. Added by Act 229 of 1897. (3960) Am. Act 204 of 1899. Any grantee or grantees under the last recorded deed to such land, or any mortgagee or mortgagees named in the last recorded mortgage, or any assignee thereof of record at the time of the giving of said notice, or any executor, administrator, heir, trustee or guardian of such grantee, mortgagee or assignee, as provided in section one hundred forty of this act, shall be entitled to receive from the person so claiming under and by virtue of such tax deed, at any time within six months after the personal service of such notice, or the date of mailing said notice by registered letter, or the first publication of such notice, as so provided, a reconveyance of such interest in such lands so held, upon payment to the grantee under such tax deed of the amount paid upon such purchase, together with one hundred per cent in addition thereto, and the lawful fees or costs for such personal service, or substituted service, which fees shall be the same as provided by law for service of subpoenas or for orders of publication, or the cost of such service by registered mail, and the further sum of five dollars for each description, without additional cost or charge: *Provided*, That any person or persons to whom the notice herein provided for is to be given shall, at any time before such notice is so given, be entitled to a reconveyance of any such lands to the parties in interest, as appears of record, on the payment to such person or persons claiming title under and by virtue of such tax deed of the amount paid upon such purchase, together with one hundred per cent in addition thereto, and the further sum of five dollars for each description:

Conditions of reconveyance.

Fees for service of notice.

Reconveyance before notice.

Provided further, If any reconveyance is made to any mortgagee or mortgagees, or assignee thereof, that such conveyance shall not operate as an absolute conveyance of the title to such lands, but shall be considered and treated as an additional lien upon said lands, and shall be added to the amount of such mortgage, and the mortgagor or person or persons claiming under him shall be entitled to a reconveyance of the tax title interest in such land from said mortgagee or mortgagees, or assignees thereof, upon the payment of all sums so paid to such person or persons claiming under any such tax deed, with interest thereon at the rate of six per cent per annum from date of such payment, and such reconveyance shall in no way operate as a release or discharge of such mortgage lien: *Provided further*, That any such application for a writ of assistance shall show that such applicant has complied with the provisions of this act as to the giving of notice as herein directed, and he shall attach to such application a copy of the notice aforesaid, and the return of the sheriff serving the same, or a copy of the proof of publication, or the registry receipt or receipts from the registry department of the postoffice, showing that such notice has been served by registered mail.

Proviso as to mortgage liens.

Application for writ of assistance.

Tender for reconveyance is to be made to the purchaser. Neither the Auditor General nor county treasurers have anything to do with reconveyance under this section.

Condition precedent to possession.

SEC. 142. Added by Act 229 of 1897. (3901) No purchaser under any tax sale hereafter made, or of any State tax land or any State bid hereafter sold, shall enter into possession of the land so purchased until six months after he has given notice to the party or parties in interest as provided for in the preceding sections unless he shall have acquired from said parties their title thereto under conveyance from said party or parties of his or their interest in said land.

SEC. 143. Added by Act 229 of 1897. (3902) Every person personally served as aforesaid and every person lawfully chargeable with notice by registered mail, as herein provided for, together with the heirs, executors, administrators or assigns of such person, who shall refuse or neglect to pay or tender to the purchaser as aforesaid, the sum provided for in this act within the time therein limited, shall be barred from questioning the validity of such tax title or tax deed thereafter.

Legislature has power to pass limitation laws prescribing the time within which parties shall assert their rights by suit.—Price v. Hopkins, 13 M. 318. Section contains provisions that are beyond the natural limits of the title of Act 229 of 1897 and is therefore void.—Citizens' Savings Bank v. Auditor General, 6 Det. Leg. News 1091. When act is broader then title if after striking out all not indicated by title what is left is complete in itself, sensible, capable of execution and fully independent of what was rejected, the act must be sustained as constitutional.—Callaghan v. Chipman, 59 M. 610, and cases cited under Sec. 20, Art. IV, Const., p. 81, C. L. '97.

Auditor General to be a party to actions to set aside taxes or tax sales.

Service on prosecuting attorney

Attorney General to defend in certain cases.

No costs taxed.

SEC. 144. Added by Act 97 of 1899. The Auditor General shall be made a party defendant to all actions or proceedings instituted for the purpose of setting aside any sale or sales for delinquent taxes on lands held as State tax lands, or which have been sold as such or which have been sold at annual tax sales, or for purpose of setting aside any taxes returned to him and for which sale has not been made; in all such cases a copy of the bill of complaint or petition shall be served upon the prosecuting attorney at the time of commencing the action, who shall send a copy thereof within five days to the Auditor General, which said service shall be in lieu of the service of process. Upon so being made a party, it shall be the duty of the Auditor General, whenever he shall, in his discretion, deem the same to be expedient, to the end that the State of Michigan may be fully protected, to cause the Attorney General to represent him in such proceedings. In any suit or proceedings instituted for the purpose in this section mentioned, no costs shall be taxed against either party to the action.

As to requirement of one seeking to set aside taxes see Merrill v. Auditor General, 24 M. 169.

In suit to set aside drain tax county drain commissioner shall be made a party.—Act 141 of 1899.

See Secs. 70, 73, 76.

State Tax Commission.

Appointment.

Qualifications.

Term of office.

SEC. 145. Added by Act 154 of 1899. It shall be the duty of the Governor by and with the advice and consent of the senate within five days after this act shall have been approved by the Governor, to appoint three resident free-holders of this State, who shall be duly qualified electors thereof, who shall constitute a Board of State Tax Commissioners, with powers and duties as prescribed under the provisions of this act, one of whom shall hold office until the thirty-first day of December, nineteen hundred; one of whom shall hold office until the thirty-first day of December nineteen hundred, and for two

years thereafter; the other of whom shall hold office until the thirty-first day of December, nineteen hundred, and for four years thereafter, or until their successors shall be appointed and have qualified, and thereafter their successors shall hold office for a term of six years, and until their successors shall be appointed and have qualified. At the expiration of the terms of office of the members of said board, their successors in office so long as this act shall remain in force, shall be appointed by the Governor by and with the advice and consent of the Senate. All appointments which are provided to be made by the Governor under this section of the act, shall be made while the Legislature is in session, and not at any other time except in cases where vacancies in office shall occur otherwise than by expiration of the term of office of any member of said board. In case a vacancy in the office occurs otherwise than by expiration of the term, the Governor shall have power to appoint to fill such vacancy at any time, and the person so appointed shall hold office until the next meeting of the Legislature after such appointment, and no longer.

Successors.

Appointments, when made.

Vacancies.

SEC. 146. Added by Act 154 of 1899. Said board shall elect a secretary at a salary not to exceed fifteen hundred dollars per annum. The person so elected shall hold his office during the pleasure of said board and shall keep a record of all the proceedings of said board, which records with all other papers or proceedings of said board shall be a part of the records of the Auditor General's office, and of which the Auditor General shall be the lawful custodian. The secretary shall devote all his time to the duties of his office, and when said board is not in session, shall perform such duties as may have been assigned him by said board.

Secretary of board.

Duties, etc.

Auditor General custodian of board's records.

SEC. 147. Added by Act 154 of 1899. The members of said board, and the secretary thereof, shall take and subscribe the constitutional oath of office to be filed with the Secretary of State. The members of said board shall receive an annual salary of two thousand five hundred dollars, and shall devote their whole time to the discharge of the duties of their office, and they shall also receive their necessary expenses in the performance of their duties, both to be audited and allowed by the Board of State Auditors, and paid monthly by the State Treasurer, out of the general fund.

Oath of office.

Salary and expenses of members.

SEC. 148. Added by Act 154 of 1899. Regular sessions of said board shall be held at the office of said board at the capitol, to be furnished by the Board of State Auditors. The said board and the members thereof, shall have access to all books, papers, documents, statements and accounts on file or of record of [in] any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of the said board, and attested by the secretary

Sessions of board.

Shall have access to public records.

Right to subpœna.

Service. thereof, directed to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment to be issued by any circuit court in the State upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. Fees for service. The person serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. May examine witnesses. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Examination of private and corporate records. Said board shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property liable to assessment for taxes, general or specific, under the laws of this State, and any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, or testify, as provided for in this section, shall be deemed guilty of a misdemeanor, and shall Penalty for refusal to permit. be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State Prison for a period not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

Regular sessions of board. SEC. 149. Added by Act 154 of 1899. Said board shall hold regular meetings on the first Tuesday of March, June, July, August, September and October in each year, and may hold adjourned sessions as may be deemed necessary by it for the proper performance of the duties devolving upon said board. Special sessions. The chairman may call special sessions of the board whenever and wherever in the State he may deem it advisable so to do, and shall call such special sessions upon the written request of two members.

Duties of board. SEC. 150. Added by Act 154 of 1899. It shall be the duty of said board:

Supervision of assessing officers. 1. To have and exercise general supervision over the supervisors and other assessing officers of this State, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this State liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value.

To secure enforcement of tax law. 2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the Governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the Attorney General or any prosecuting attorney in the State to assist said board.

To investigate irregular assessments. 3. To receive complaints as to property liable to taxation that has not been assessed, or has been fraudulently or im-

properly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if found to exist.

To visit each county, etc.

4. To see that each county in the State be visited by at least one member of the board as often as once each year, to the end that all complaints concerning the law may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

To secure information as to operation of the tax law.

5. To require from any officer in this State, on forms prescribed by said Board of State Tax Commissioners such annual or other reports as shall enable said Board of State Tax Commissioners to ascertain the assessed valuations and equalized valuations of all property listed for taxation throughout the State under this act; the amount of taxes assessed, collected and returned delinquent, and such other matter as the board may require, to the end that it may have complete and statistical information as to the practical operation of this act.

To ascertain valuations and rate of taxation.

6. To inquire into and ascertain the valuation of the properties of corporations paying specific taxes under any of the laws of this State, and to ascertain the actual rate of taxation as based upon the valuation of said properties that is being paid by said corporations, and to this end said board shall require reports from, and make investigations, as to the properties of such corporations in the same manner and to the same extent as if said corporations were paying taxes under this act.

To enquire into revenue systems.

7. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same is made known by published reports and statistics, and can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the Legislature, at each regular session thereof, such amendments, changes or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenues.

To make recommendations to legislature.

To report to legislature taxes collected, lost, etc.

8. To further report to the Legislature at each regular session thereof, or at such other times as the Legislature may direct, the whole amount of taxes collected in the State for all purposes, classified as to State, county and township and municipal purposes, with the sources thereof; the amount lost; the cause of the loss; the proceedings of said board, and such other matters of information concerning the public revenues as it may deem of public interest.

To report valuation and taxes paid by corporations paying specific taxes.

9. To further report to the legislature at the beginning of the regular sessions, specifically, the true valuation of the properties of corporations paying specific taxes and the rate of taxation actually paid on said valuation and the true valuation of all other properties of the State and the rate of taxation the same are paying, to the end that the legislature shall have the

information necessary to rearrange the rate or system of taxation on said properties, so that all taxable properties of the State may be taxed uniformly.

To attend meetings of State Board of Equalization.

10. To be present at each meeting of the State Board of Equalization and furnish such information as said board may require, and that may assist said board in the performance of the duties imposed upon it by law.

Board to make annual report to Governor.

SEC. 151. Added by Act 154 of 1899. The Board of State Tax Commissioners shall, on or before the fifteenth day of December in each year, make an annual report to the Governor of this State, setting forth the workings of said commission during the preceding year, and containing the findings and recommendations of said commission in relation to all matters of taxation. The Board of State Auditors shall cause five thousand copies of said annual report to be printed on or before the fifteenth day of January succeeding the making of said report. Three hundred copies of said report shall be placed at the disposal of the State Librarian for distribution and exchange.

Printing of copies.

Board may inspect assessment rolls.

SEC. 152. Added by Act 154 of 1899. After the various assessment rolls required to be made under this act shall have been passed upon by the several boards of review, and prior to the time fixed for equalization and apportionment of State and county taxes, the said several assessment rolls in the State shall be subject to inspection by said Board of State Tax Commissioners or by any member thereof; and in case it shall appear, or be made to appear, to said board that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said board may issue an order directing the assessor whose assessments or failure to assess is complained against, to appear with his assessment roll at a time and place to be stated in said order, said time to be not less than seven days from the date of issuance of said order, and the place to be at the office of the board of supervisors at the county seat or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided. A notice of the time and place that said assessor is ordered to appear with said roll, together with a statement of the persons whose property or whose assessments are to be considered shall be published in a newspaper published at the county seat of said county if there be one; if not in some paper printed in said county if there be any, at least, five days before the time at which said assessor is required to appear, and where practicable personal notice by mail shall be given to said persons prior to said hearing. A copy of said order shall also be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll.

May require assessor to appear, etc.

Notice.

The said board or any member thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by the review of said assessments thus provided for may appear and be heard at said hearing. In case said board or the member thereof who shall act in said review, shall determine that the assessments so reviewed are not assessed according to law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board or member thereof acting in said review, shall place the same upon said assessment roll by proper description, and shall place thereafter, in the proper column, the true cash value of the same. In case of review under the provisions of this section, the said board or the member thereof acting in said review shall certify under his hand officially and spread upon said roll a certificate of the day and date at which said assessment roll was reviewed by him, and the changes by him made therein. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him in the preparation of his assessment roll, to be presented to and paid by the proper officers of the municipality of which he is the assessing officer, in the manner as his other compensation is paid. The action of said board or member taken as provided in this act shall be final.

Shall hear and determine, etc.

Shall correct assessment in certain cases.

Shall add omitted property to roll.

Shall certify to action taken.

Compensation of assessor.

SEC. 153. Added by Act 154 of 1899. In case it shall appear or be made to appear to said board that any assessment roll in the State is so grossly irregular and unlawfully assessed that adequate compliance with the law cannot be secured except by a general review of said assessment roll, said board may make and issue an order that said assessment roll shall be subject to general review, and the time and place shall be stated in said order, at which said roll shall be reviewed, and under said order the assessor whose assessment or failure to assess is complained against shall be required to appear with his assessment roll at the time and place thus determined, said time to be not less than fourteen days from the issuance of said order, and the place to be at the office of the board of supervisors at the county seat, or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided for. A notice of the time and place that said assessor is required to appear with said roll, together with a statement that said roll will be subject to general review, and that all persons interested therein may be heard at said time, shall be published in a newspaper published at the county seat of said county, if there be one; if not, in some paper printed in said county, if there be any, at least seven days before the time at which said assessor is required to appear. A copy of the order made as aforesaid shall be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is

Review of assessment under order of board.

Time and place.

Notice.

Publication.

Service on assessor.

required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there review said assessment roll and may hear and determine complaints as to the said assessment roll and the assessments of property therein, and he or they shall have power to determine in accordance with law, the amount at which said assessments shall be placed, and to change the same, so that said assessments may comply with the law. Also to place upon said roll property omitted therefrom, in the same manner as provided in the last preceding section. The determination of said board or member thereof acting in said review shall place in a column provided for that purpose, and shall proceed in all respects as provided in the last preceding section, and the supervisor or assessing officer shall receive the same compensation as provided in said section.

Review by board.

Board to change assessments.

To add omitted property.

Compensation of assessor.

Report of property omitted in prior years.

SEC. 154. Added by Act 154 of 1899. If it shall be made to appear to said board at any time after the last meeting of the State Board of Equalization that any property liable to taxation has not been assessed for any previous year as hereinafter provided, the said board shall report the same to the proper assessing officer and the same shall be listed for taxation upon the next assessment roll that shall be made, and shall be valued as all other property. The said board shall further certify to the board of supervisors of the several counties at the October session thereof, next after said property shall be then listed for taxation, the description of said property and the several years that the same has been liable for, and escaped taxation, and said board of supervisors shall ascertain the rate of taxation for said several years and shall order the taxes for said years to be spread against said property upon the valuation for the then current year, and the same shall be so spread in a column provided for that purpose, and it shall constitute a charge against the person and property, and be collected as other taxes: *Provided, however*, That this provision shall not be deemed to relate back prior to the going into effect of this section: *And provided further*, That in case of change in ownership of the property omitted said taxes shall not be spread against said property prior to the last change of ownership.

Certification to board of supervisors.

Proviso.

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Where it affirmatively appears from the resolution of the township board that the question of raising the highway, contingent and school taxes has been called to the attention of the voters and from the record of the election that the electors had neglected and refused to vote the tax, the board has authority to vote such taxes.—A township board had, under such circumstances, no authority to include in the school tax an item for fuel, which was not authorized by the resolution of the board of education.—An amount voted by the township board to pay bonded indebtedness and interest thereon cannot be sustained where it appears from the records that there has already been raised by taxation an amount greatly in excess of such indebtedness and no showing is made that the money raised for this purpose has not been so applied.—A township board has authority to vote a tax for the support of the poor, even though the electors fail to make provisions for the same at the annual meeting.—A county tax is not rendered illegal by reason of the failure of the resolution authorizing the tax to show for what specific purposes the tax was voted.—Weston Lumber Co. v. Township of Munising; Chicago Lumber Co. v. Township of Munising, 7 Det. Leg. News 1.

One occupying premises under permission of the heirs as tenant in common without charge cannot charge estate with taxes paid on the property during her occupancy.—Graff v. Graff, 7 Det. Leg. News 3.

It is a fatal objection to the legality of the sale of lands for taxes that the amount decreed against the land and amount the land sold for are entered in figures on the Tax Record without dollar mark.—Russell v. Chittenden, 7 Det. Leg. News 8.

The board of review provided for by 3353 C. L. '97, to act upon the apportionment of the cost of constructing a drain through several townships, is not authorized to review the action of the drain commissioner in his determination of the entire amount of the assessment, but only to review the apportionment of such amount among the several townships.—Sholtz v. Ely, 7 Det. Leg. News 27.

One in possession of land under a land contract cannot by the purchase of a tax title which existed at the time he received his contract defeat the title of his vendor.—Curran v. Banks, 7 Det. Leg. News 50.

ERRATA.

Notes to Sec. 1, p. 10, ¶ 1.—Musical Societies.—For "1857" C. L. '97, read 8257.
Notes to Sec. 7, p. 14, ¶ 1.—For "Auketell v. Hayward," read Ludington Water Supply Co. v. City of Ludington.
Notes to Sec. 7, p. 15, ¶ 2.—For "8071" C. L. '97, read 8170.
Notes to Sec. 15, p. 25, ¶ 1.—For "Wood" read Hood.
Notes to Sec. 36, p. 47, ¶ 1.—For "Goodrich v. Detroit," 6 Det. Leg. News, read 7 Det. Leg. News 11.
Notes to Sec. 36, p. 47, ¶ 1.—For Voight v. Detroit, "6" Det. Leg. News, read 7 Det. Leg. News 21.
Notes to Sec. 47, p. 62, ¶ 6.—For 72 M. "529," read 659.
Notes to Sec. 61, p. 73.—For "Parsons," read Carson.
Notes to Sec. 72, p. 93, ¶ 3.—For "109 Mich. 388," read 104 Mich. 38.
Notes to Sec. 72, p. 94, ¶ 6.—For "Legare," read Ligare.
Notes to Sec. 72, p. 94, ¶ 6.—For "Powell," read Towl.
Notes to Sec. 73, p. 97, ¶ 1.—For "Riley," read Reilly.
Notes to Sec. 73, p. 97, ¶ 1.—For "Brooks," read Crooks.
Notes to Sec. 99, p. 116, ¶ 4.—For "the" warrant, read no warrant.

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